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Supreme Court, U.S.
FILED

MAR 4 1998

No. 97-634

CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM, 1997

COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF CORRECTIONS, ET AL.,
Petitioners,

v.

RONALD R. YESKEY,
Respondent.

On Writ of Certiorari to the United States
Court of Appeals for the Third Circuit

JOINT APPENDIX

PAUL A. TUFANO*
General Counsel
Commonwealth of Pennsylvania

SYNDI L. GUIDO
Deputy General Counsel
Office of General Counsel
333 Market Street
17th Floor
Harrisburg, PA 17101
Telephone (717) 783-6563
Counsel for Petitioners

DONALD SPECTER*
Prison Law Office
General Delivery
San Quentin, CA 94964
Telephone (415) 457-9144

EVE H. CERVANTEZ
Howard, Rice, Nemerovski
Canady, Falk & Rabkin
3 Embarcadero Center,
7th Floor
San Francisco, CA 94111
Telephone (415) 434-1600
Counsel for Respondent

**Counsel of Record*

PETITION FOR CERTIORARI FILED OCTOBER 8, 1997
CERTIORARI GRANTED JANUARY 23, 1998

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RELEVANT DOCKET ENTRIES

<u>DATE</u>	<u>PROCEEDING</u>
	<i>The United States District Court for the Western District of Pennsylvania</i>
12/21/94	Complaint
4/24/95	Motion to Dismiss, or, in the Alternative, Motion to Transfer
5/25/95	Petitioner's Brief in Support of the Motion to Dismiss
6/8/95	Petitioner's Supplement to the Motion to Dismiss
6/20/95	Respondent's Brief in Response to the Motion to Dismiss
10/19/95	Report and Recommendation of the Magistrate Judge
11/9/95	Memorandum Order
12/13/95	Case Transferred to the Middle District Court of Pennsylvania
	<i>The United States District Court for the Middle District of Pennsylvania</i>
1/23/96	Report and Recommendation of the Magistrate Judge
2/8/96	Respondent's Objections
2/8/96	Respondent's Brief in Support of Objections
2/13/96	Petitioner's Brief in Opposition to Objections
4/9/96	Memorandum and Order Granting Motion to Dismiss
5/7/96	Notice of Appeal

JA-2

The Court of Appeals for the Third Circuit

7/1/96

Respondent's Brief

8/1/96

Petitioner's Brief

7/10/97

Opinion

7/10/97

Judgment

*The United States District Court for the Middle
District of Pennsylvania*

9/30/97

Petitioner's Motion to Stay the Proceedings

10/1/97

Order Granting Motion to Stay Proceedings

JA-3

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA
CIVIL DIVISION

RONALD R. YESKEY,	)	CIVIL ACTION NO.
Plaintiff,)	
	)	<u>94 2180</u>
vs.	)	JURY TRIAL DEMANDED
THE COMMONWEALTH OF)	
PENNSYLVANIA	)	I HEREBY CERTIFY THE WITHIN
DEPARTMENT OF	)	TO BE A TRUE AND CORRECT
CORRECTIONS,	)	COPY OF THE ORIGINAL.
JOSEPH D. LEHMAN,)	
JEFFREY A. BEARD, Ph.D.,)	
JEFFREY K. DITTY,	)	/s/ L. Abraham Smith
DOES NUMBER 1 THROUGH	)	<u>L. Abraham Smith, Esq.</u>
20, INCLUSIVE,	)	Attorney for Plaintiff
Defendants.)	

COMPLAINT

Plaintiff, Ronald R. Yeskey, brings this complaint by and through his attorney, L. Abraham Smith, Esquire, and alleges as follows:

INTRODUCTION (PARTIES AND JURISDICTION)

1. Plaintiff Ronald R. Yeskey is a [sic] adult citizen of the United States and the Commonwealth of Pennsylvania, and a resident of Hempfield Township, Westmoreland County, Pennsylvania. At all times pertinent hereto Plaintiff was and has been incarcerated in the custody of the Defendant Commonwealth of Pennsylvania Department of Corrections, within the custody and control of said Defendant and their employees.

2. Plaintiff brings this civil rights action to enforce Plaintiff's rights under the Americans With Disabilities Act of 1990 (42 U.S.C. §12101, et seq.), and to redress the deprivation under color of state law of rights, privileges and immunities secured to Plaintiff by provisions of the Fifth, Eighth and Fourteenth Amendments to the United States Constitution, and Article I, section 1 of the Pennsylvania Constitution. Plaintiff alleges that he has been denied access to programs, opportunities and ben-

efits offered by the Defendant Department of Corrections on the basis that he is a qualified person with a disability. Plaintiff alleges further that the aforementioned acts and/or policies and practices of Defendants and their employees are knowing, deliberate and intentional, in disregard for the rights, health and well-being of Plaintiff, and that such acts, policies and practices are contrary to law, shocking to the conscience of civilized persons, and intolerable in a society purportedly governed by laws and considerations of due process.

3. This Court's jurisdiction is invoked pursuant to 28 U.S.C. §§ 1331, 1343(a)(3) and (4). Plaintiff's claims are authorized by 28 U.S.C. §§ 2201 and 2202. The substantive claims herein arise under the Americans With Disabilities Act of 1990 (42 U.S.C. § 12101, et seq.); 42 U.S.C. § 1983; and the Fifth, Eighth and Fourteenth Amendments to the United States Constitution. Plaintiff further invokes the supplemental jurisdiction of this Court pursuant to 28 U.S.C. § 1367 to hear and decide claims arising under state law and based upon a common nucleus of operative fact.

4. Defendant, Commonwealth of Pennsylvania Department of Corrections is an agency of the Commonwealth of Pennsylvania possessing the corporate power to sue and be sued. Its principal mailing address is P.O. Box 598, Camp Hill, Pa., 17001-0598, and its main office is located at 2520 Lisburn Road, Camp Hill, Pa., 17001. The Department is delegated the responsibility for the administration and supervision of the correctional facilities within the state correctional system, including the maintenance of facilities and programs relative thereto, and the promulgation, administration, and enforcement of rules and regulations governing the conduct of such facilities and programs, and the protection of the rights of the citizenry of the Commonwealth of Pennsylvania.

5. Defendant Joseph D. Lehman, is a resident of the Commonwealth of Pennsylvania and is and always has been, at all times pertinent hereto, the Commissioner of the Commonwealth of Pennsylvania, Department of Corrections. His principal mailing address is P.O. Box 598, Camp Hill, Pa., 17001-0598, and the location of his office is 2520 Lisburn Road, Camp Hill, Pa., 17001. Defendant is responsible for the administration, operation

and supervision of the Department, and for the promulgation and enforcement of rules, regulations, policies and practices relevant thereto, and at all times relevant hereto was acting in that capacity and under color of state law. Defendant is sued herein individually and in his official capacity as to Count I; as to Counts II and III, Defendant is sued in his individual capacity only.

6. Defendant Jeffrey A. Beard, Ph.D., is a resident of the Commonwealth of Pennsylvania and is and always has been, at all times pertinent hereto, the Superintendent of the State Correctional Institution at Camp Hill, Pa. His principal office is SCI - Camp Hill, P.O. Box 8837, Camp Hill, Pa., 17001-8837. Defendant is responsible for the administration, operation and supervision of said Institution, and for the promulgation and enforcement of rules, regulations, policies and practices relevant thereto, and at all times relevant hereto was acting in that capacity and under color of state law. Defendant is sued herein individually and in his official capacity as to Count I; as to Counts II and III, Defendant is sued in his individual capacity only.

7. Defendant Jeffrey K. Ditty is a resident of the Commonwealth of Pennsylvania and is and always has been, at all times pertinent hereto, the Director of the Central Diagnostic and Classification Center, Unit #2, of the State Correctional Institution at Camp Hill, Pa. His principal office is SCI - Camp Hill, P.O. Box 8837, Camp Hill, Pa., 17001-8837. Defendant is responsible for the administration, operation and supervision of the selection of inmates for the Motivational Boot Camp Program, and for the promulgation and enforcement of rules, regulations, policies and practices relevant thereto, and at all times relevant hereto was acting in that capacity and under color of state law. Defendant is sued herein individually and in his official capacity as to Count I; as to Counts II and III, Defendant is sued in his individual capacity only.

8. Defendants, Does number 1 through 20, inclusive, are persons employed or contracted by the named Defendants, or persons whose actions are otherwise responsible for the violations of the statutes and constitutional rights alleged in this action. The identifies [sic] of such persons are at the time of the filing of this complaint unknown, and are expected to be ascertained through the normal processes of discovery.

PRELIMINARY FACTS:

9. Commencing in May, 1994 Plaintiff Ronald R. Yeskey was committed to the custody of Defendant Commonwealth of Pennsylvania, Department of Corrections, by order of the Honorable Richard E. McCormick, Jr., Court of Common Pleas, Westmoreland County, Pennsylvania, to serve a sentence of eighteen (18) to thirty-six (36) months incarceration, following a guilty plea entered in state criminal court.

10. At the time of sentencing, the Court's sentencing order included a recommendation that Plaintiff be placed in the Defendant Department of Corrections' Motivational Boot Camp program, which program would have conferred upon Plaintiff the statutory benefit of being released on parole upon successful completion of said program (which program was approximately six (6) months in duration.)

11. On or about July 1, 1994, while in Defendant's custody and housed at the Central Diagnostic and Classification Center at the State Correctional Institution at Camp Hill, Pennsylvania, Plaintiff was notified by the Defendant Department of Corrections that said Defendant had determined that Plaintiff was ineligible for participation in the Motivational Boot Camp program. The said Defendant based this decision on the fact that the Plaintiff was medically disapproved for participation in the program due to a medical history of hypertension (on medication).

12. Despite repeated requests by Plaintiff, the Defendant Department of Corrections failed and refused to reconsider their decision deeming Plaintiff ineligible for participation in the Motivational Boot Camp program; further, the Department of Corrections has failed and refused to establish and/or advise Plaintiff of any alternative program offering to disabled persons such as the Plaintiff the same benefits as the Motivational Boot Camp Program.

COUNT I: CLAIMS PURSUANT TO TITLE II OF THE AMERICANS WITH DISABILITIES ACT OF 1990 (42 U.S.C. §12101, et seq.)

13. Plaintiff hereby incorporates by reference paragraphs 1 through 12 of this complaint as though fully set forth at length herein.

14. That Ronald R. Yeskey is a qualified individual with a disability, within the meaning of the ADA.

15. That the Commonwealth of Pennsylvania, Department of Corrections is a public entity within the meaning of the ADA.

16. That the Motivational Boot Camp program is a service, program, or activity of a public entity within the meaning of the ADA.

17. That the Department of Corrections denied Plaintiff admission to the Motivational Boot Camp Program solely based upon his status as an individual with a disability.

18. That the actions of the Department of Corrections constitute a violation of the ADA, by specifically violating the provisions of said statute and the regulations promulgated thereunder by the United States Department of Justice, in the following respects:

i.) by denying a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service offered by the public entity;

ii.) by affording a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

iii.) by providing a qualified individual with a disability with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

iv.) by otherwise limiting a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service; and,

v.) by utilizing criteria or methods of administration that have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability;

vi.) by utilizing criteria or methods of administration that have the purpose or effect of substantially impairing accomplishment of the objectives of the public entity's program with respect to individuals with disabilities.

WHEREFORE, the Plaintiff claims the damages specified hereinafter, jointly and severally, against each defendant.

COUNT II: CIVIL RIGHTS CLAIMS PURSUANT TO 42 U.S.C. §1983

19. Plaintiff hereby incorporates by reference paragraphs 1 through 18 of this complaint as though fully set forth at length herein.

20. Defendants, their agents and employees, with knowledge of Plaintiff's circumstances, and/or with deliberate indifference to such circumstances, have acted or failed to act in such a way as to deprive Plaintiff of the equal protection of the law. Such acts and omissions of the Defendants violate rights secured to the Plaintiff under the Fourteenth Amendment to the United States Constitution.

21. Defendants, their agents and employees, with knowledge of Plaintiff's circumstances, and/or with deliberate indifference to such circumstances, have acted or failed to act in such manner as to inflict upon Plaintiff cruel and unusual punishment. Such acts and omissions of the Defendants violate rights secured to the Plaintiff under the Eighth Amendment to the United States Constitution.

22. Defendants, their agents and employees, with knowledge of Plaintiff's circumstances, and/or with deliberate indifference to such circumstances, have acted or failed to act in such manner as to violate Plaintiff's rights established by the ADA and the regulations promulgated thereunder.

23. The Defendants' aforesaid actions and/or omissions were intentional and/or wilful and/or intentional.

24. The Defendants' aforesaid actions and/or omissions were committed under color of law and/or pursuant to policies,

customs, practices, rules, regulations, ordinances, statutes and/or usage of the Commonwealth of Pennsylvania Department of Corrections.

WHEREFORE, the Plaintiff claims the damages specified hereinafter, jointly and severally, against each defendant.

COUNT III: CLAIM FOR VIOLATION OF CIVIL RIGHTS GUARANTEED BY THE CONSTITUTION OF THE COMMONWEALTH OF PENNSYLVANIA.

25. Plaintiff hereby incorporates by reference paragraphs 1 through 18 of this complaint as though fully set forth at length herein.

26. Plaintiff invokes the supplemental jurisdiction of this Court pursuant to 28 U.S.C. §1367 to hear and decide claims arising under state law and based upon a common nucleus of operative fact with those in Count 1.

27. At all times relevant hereto the Defendants were acting under color of authority granted them by the laws of the Commonwealth of Pennsylvania.

28. As a result of the intentional and/or wilful actions of the Defendants, the Plaintiff's rights as a citizen of the Commonwealth of Pennsylvania, being born free and independent, and having certain inherent and inalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing his own happiness, as guaranteed by Article I, section 1 of the Constitution of the Commonwealth of Pennsylvania were infringed and denied by the Defendants, acting both jointly and severally.

WHEREFORE, the Plaintiff claims the damages specified hereinafter, jointly and severally, against each defendant.

DAMAGES:

29. As a result of the conduct of all Defendants, the Plaintiff has suffered, and will continue to suffer, damages including, but not limited to, violations of Plaintiff's rights established by the

Americans With Disabilities Act of 1990, and the Constitutions of the Commonwealth of Pennsylvania and of the United States of America.

30. As a result of the conduct of Defendants, the Plaintiff has suffered, and will continue to suffer, continued incarceration beyond that imposed upon similarly situated non-disabled persons incarcerated within the facilities of the Pennsylvania Department of Corrections.

31. As a result of the conduct of Defendants, the Plaintiff has suffered, and will continue to suffer, mental stress, mental anguish and trauma, emotional distress, humiliation, depression, interference with social relations, loss of enjoyment of life, suffering and inconvenience.

32. As a direct and proximate result of the injuries sustained, Plaintiff has been deprived, and will continue to be deprived of the ordinary pleasures of life.

33. As a direct and proximate result of the injuries sustained, Plaintiff has in the past suffered and will continue to suffer a loss of earnings, and/or his earning power has been diminished or lessened and/or will continue to be diminished or lessened.

34. As a direct and proximate result of the above described actions and omissions of Defendants, Plaintiff has suffered general damages, exclusive of interest and costs, the exact amounts of which will be proven at trial.

35. To the extent that monetary damages are in themselves inadequate, and Plaintiff has been suffering and will continue to suffer irreparable harm from Defendants' actions, policies, and procedures, and from the violations of the laws complained of herein; accordingly, declaratory and injunctive relief is necessary and appropriate.

WHEREFORE, Plaintiff respectfully prays:

- a.) That this Court assume jurisdiction;
- b.) That this Court award Plaintiff monetary damages as permitted by law, including punitive damages;
- c.) That this Court issue a declaratory judgment and a preliminary and permanent injunction to immediately enjoin Defen-

dants from administering the Motivational Boot Camp Program without complying with Title II of the ADA and the federal regulations promulgated thereunder;

d.) That this Court issue a declaratory judgment and a preliminary and permanent injunction to immediately enjoin Defendants from detaining Plaintiff in their custody beyond the chronological point when Plaintiff would have been released had he been admitted to and successfully completed the Boot Camp Program (which is the tangible benefit associated with the program by state statute);

e.) That this Court preliminarily and permanently enjoin Defendants to submit plans to the Court for implementation of the aforesaid;

f.) Award the Plaintiff the costs of bringing this action, and award reasonable fees and expenses to Plaintiff's attorney; and,

g.) That this Court award such additional or alternative relief as may be just, proper and equitable.

Respectfully submitted,

DATED: 12/19/94

/s/ L. Abraham Smith

L. Abraham Smith, Esquire
Attorney for Plaintiff.

Pa. I.D. #69020

P.O. Box 1644

Greensburg, PA 15601-7644

(412) 423-8614

DEMAND FOR JURY TRIAL

Plaintiff Ronald R. Yeskey, by and through his undersigned attorney, hereby demands a trial by jury as to all issues so triable herein.

DATED: 12/19/94

/s/ L. Abraham Smith

L. Abraham Smith, Esquire
Attorney for Plaintiff.
Pa. I.D. #69020

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

RONALD R. YESKEY,)	
Plaintiff,)	
)	
v.)	
)	
THE COMMONWEALTH OF	)	Civil Action No. 94-2180
PENNSYLVANIA DEPARTMENT	)	Judge Alan N. Bloch/
OF CORRECTIONS,	)	Magistrate Judge Sensenich
JOSEPH D. LEHMAN,)	
JEFFREY A. BEARD, Ph.D.,)	
JEFFREY K. DITTY, DOES)	
NUMBER 1 THROUGH 20,)	
INCLUSIVE,)	
Defendants.)	

**MOTION TO DISMISS, OR, IN THE ALTERNATIVE,
MOTION TO TRANSFER**

Defendants, by their attorneys, Ernest D. Preate, Jr., Attorney General, Gloria A. Tischuk, Deputy Attorney General, and John G. Knorr, III, Chief Deputy Attorney General, Chief, Litigation Section, move, pursuant to Rule 12(b)(3), to dismiss this action due to improper venue, or, in the alternative, to transfer this action; and, also, pursuant to Article III, and the Eleventh Amendment, for lack of jurisdiction and, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure; and, in support, submit the following:

1. Plaintiff is Ronald R. Yeskey, an inmate currently incarcerated at the State Correctional Institution at Greensburg, in Westmoreland County, Pennsylvania.

2. Plaintiff does not complain about any event or incident that occurred at the State Correctional Institution at Greensburg, or, in Westmoreland County, Pennsylvania, or, in the Western District of Pennsylvania.

3. The Defendants are: The Commonwealth of Pennsylvania, Department of Corrections; the former Superintendent of the Department, Joseph D. Lehman, in Harrisburg, Pennsylvania; Jeffrey A. Beard, the Superintendent at the State Correctional Institution at Camp Hill, Pennsylvania; Jeffrey K. Ditty, the

Director of the Central Diagnostic and Classification Center at the State Correctional Institution at Camp Hill, Pennsylvania. Plaintiff has also included in the caption unnamed "John Doe" defendants, none of whom are identified and none of whom have been served.

4. All of the Defendants are located in the Middle District of Pennsylvania.

5. Plaintiff's complaint arises from the alleged refusal of the individual defendants to permit him to participate in the Motivational Boot Camp program due to his medical history of hypertension, on medication, and the plaintiff's conclusion that this denial violated Title II of the Americans with Disabilities Act.

6. Plaintiff also includes separate Counts under the federal civil rights act, 42 U.S.C. Section 1983, for violation of plaintiff's fifth, eighth and fourteenth amendment rights, and for alleged violations of the rights guaranteed by the Pennsylvania Constitution.

7. Defendants move to dismiss these counts on the following grounds:

A. The complaints based upon the Pennsylvania Constitution and 42 U.S.C. Section 1983 against the Commonwealth of Pennsylvania and the Department of Corrections are barred by the eleventh amendment.

B. The complaints based upon the Pennsylvania Constitution and 42 U.S.C. Section 1983 against the individual defendants in their official capacities for damages are barred by the eleventh amendment. Although plaintiff alleges that defendants are sued in their individual capacities, his allegations arise from their official supervisory positions and is [sic] premised on theories of respondeat superior or vicarious liability.

C. Neither the Commonwealth, the Department nor the individual defendants in their official capacities are "persons" within the meaning of Section 1983; and, therefore, the complaints alternatively fail to state a claim upon which relief can be granted.

D. All claims under state law are alternatively barred by the Pennsylvania Sovereign Immunity Act.

E. The complaint, in general, fails to state a claim upon which relief can be granted.

F. Venue in the United States District Court for the Western District of Pennsylvania is improper.

8. In his complaint, plaintiff alleges that the actions or decisions about which he complains were made in the Middle District of Pennsylvania by the individual defendants, who are all located in the Middle District of Pennsylvania.

9. Section 1391(b) of the United States Judicial Code, 28 U.S.C. Section 1391(b), provides that a civil action, other than one based on diversity of citizenship, may be brought in the judicial district where any defendant resides, in the judicial district where a "substantial part of the events or omissions giving rise to the claim occurred," or where any defendant may be found.

10. The complaint alleges, and there is no dispute, that all defendants reside in the Middle District and that the alleged events or omissions giving rise to the claim occurred in the Middle District.

11. Since this is the case, and venue is improper, then pursuant to Section 1406, 28 U.S.C. Sec. 1406, provides that the case "laying venue in the wrong division or district", shall be dismissed.

12. Alternatively, Section 1406 also provides that "if it [is] in the interest of justice," the case may be transferred to any district in which it could have been brought.

13. In this case, the United States District Court for the Middle District of Pennsylvania is the district where this civil action could have been brought.

14. In addition to protecting litigants, witnesses and the public from unnecessary expense and inconvenience, and to avoid a waste of time, energy and money, all of the relevant considerations for venue purposes reveal that this case, if not dismissed for improper venue, should be transferred to the United States District Court for the Middle District of Pennsylvania.

15. This motion to dismiss or alternatively to transfer on grounds of improper venue is not meant and is not intended to waive, and the defendants are not waiving the constitutional immunity conferred by the Eleventh Amendment or any statutory immunity conferred as a matter of state law, or any ground for dismissal set forth in this motion, should any transfer occur.

JA-16

WHEREFORE, it is requested that this motion be granted and that the proposed order be entered, dismissing this action with prejudice or, alternatively, transferring this action for disposition of these matters by the United States District Court for the Middle District of Pennsylvania.

Respectfully submitted,

ERNEST D. PREATE, JR.
Attorney General

By: /s/ Gloria A. Tischuk

Gloria A. Tischuk
Deputy Attorney General
PA ID. 44155

John G. Knorr, III
Chief Deputy Attorney General
Chief, Litigation Section

OFFICE OF ATTORNEY GENERAL
4th Floor, Manor Complex
564 Forbes Avenue
Pittsburgh, PA 15219
Date: April 21, 1995

JA-17

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

RONALD R. YESKEY,)	
Plaintiff,)	
)	
v.)	
THE COMMONWEALTH OF	)	Civil Action No. 94-2180
PENNSYLVANIA DEPARTMENT	)	Judge Alan N. Bloch/
OF CORRECTIONS,	)	Magistrate Judge Sensenich
JOSEPH D. LEHMAN,)	
JEFFREY A. BEARD, Ph.D.,)	
JEFFREY K. DITTY, DOES)	
NUMBER 1 THROUGH 20,)	
INCLUSIVE,)	
Defendants.)	

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Motion to Dismiss, Or, In the Alternative, Motion to Transfer was served upon the following via first-class mail on April 21, 1995.

L. Abraham Smith, Esquire
P.O. Box 1644
Greensburg, PA 15601-7644

/s/ Gloria A. Tischuk
Gloria A. Tischuk
Deputy Attorney General

OFFICE OF ATTORNEY GENERAL
4th Floor, Manor Complex
564 Forbes Avenue
Pittsburgh, PA 15219
Date: April 21, 1995

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

RONALD R. YESKEY,)	
Plaintiff,)	
)	
v.)	
)	
THE COMMONWEALTH OF	)	Civil Action No. 94-2180
PENNSYLVANIA DEPARTMENT	)	Judge Alan N. Bloch/
OF CORRECTIONS,	)	Magistrate Judge Sensenich
JOSEPH D. LEHMAN,)	
JEFFREY A. BEARD, Ph.D.,)	
JEFFREY K. DITTY, DOES)	
NUMBER 1 THROUGH 20,)	
INCLUSIVE,)	
Defendants.)	

ORDER OF COURT

AND NOW, this _____ day of _____, 1995, upon consideration of the foregoing motion to dismiss, or, in the alternative, to transfer, it is hereby **ORDERED** that this motion is **GRANTED**.

I.

It is hereby **ORDERED** that this action is **DISMISSED** with prejudice.

II.

It is hereby **ORDERED** that the motion to transfer this action is **GRANTED** and that this action is transferred to the United States District Court for the Middle District of Pennsylvania.

By the Court:

J.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

RONALD R. YESKEY,)	
Plaintiff,)	
)	
v.)	
)	
THE COMMONWEALTH OF	)	Civil Action No. 94-2180
PENNSYLVANIA DEPARTMENT	)	Judge Alan N. Bloch/
OF CORRECTIONS,	)	Magistrate Judge Sensenich
JOSEPH D. LEHMAN,)	
JEFFREY A. BEARD, Ph.D.,)	
JEFFREY K. DITTY, DOES)	
NUMBER 1 THROUGH 20,)	
INCLUSIVE,)	
Defendants.)	

**SUPPLEMENT TO THE COMMONWEALTH
DEFENDANTS' MOTION TO DISMISS,
OR, IN THE ALTERNATIVE,
MOTION TO TRANSFER**

The Commonwealth Defendants, by their attorneys, Ernest D. Preate, Jr., Attorney General, Gloria A. Tischuk, Deputy Attorney General, and John G. Knorr, III, Chief Deputy Attorney General, Chief, Litigation Section, file this as a supplement to their motion to dismiss, or, in the alternative, motion to transfer; and submit the attached:

- (1) Declaration of Clifford D. Swift;
- (2) Quehanna Boot Camp Physical Fitness Manual.

The Commonwealth Defendants restate and incorporate by reference in this supplement the said motion dated April 21, 1995, and the brief filed in support dated May 24, 1995.

WHEREFORE, the Commonwealth Defendants move to dismiss this action, or, alternatively, to transfer this action to the Middle District.

JA-20

Respectfully submitted,
ERNEST D. PREATE, JR.
Attorney General

By: /s/ Gloria A. Tischuk

Gloria A. Tischuk
Deputy Attorney General
PA ID. 44155

John G. Knorr, III
Chief Deputy Attorney General
Chief, Litigation Section

OFFICE OF ATTORNEY GENERAL

4th Floor, Manor Complex

564 Forbes Avenue

Pittsburgh, PA 15219

Date: June 7, 1995

JA-21

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

RONALD R. YESKEY,)	
Plaintiff	)	CV-94-2180
)	
v.	)	(Judge Bloch)
)	
THE COMMONWEALTH OF)	
PENNSYLVANIA DEPARTMENT	)	(Magistrate Judge Sensenich)
OF CORRECTIONS,)	
JOSEPH D. LEHMAN,)	
JEFFREY A. BEARD, Ph.D.,)	
DOES NUMBER 1 THROUGH 20,)	
INCLUSIVE,)	
Defendants)	

DECLARATION OF CLIFFORD D. SWIFT

I, Clifford D. Swift, hereby declare under penalty of perjury that the following statements are true and correct based upon my personal knowledge and belief.

1. I am employed by the Commonwealth of Pennsylvania, Office of General Counsel, as attorney for the Department of Corrections.

2. The attached Physical Fitness Manual is a true and correct copy of the manual utilized at the Department of Corrections, Quehanna Motivational Boot Camp.

/s/ Clifford D. Swift

Clifford D. Swift

Executed this 30th day of May, 1995

QUEHANNA BOOT CAMP PHYSICAL FITNESS[SIC] MANUAL



BY: LT. G.D. McMAHON

QUEHANNA BOOT CAMP PHYSICAL FITNESS [SIC] MANUAL

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Appendix

1. Quehanna Boot Camp Physical Fitness Scoring Standards (Army Physical Fitness Standards Test Standards).
 - a. Male/Female Push-Up
 - b. Male/Female Sit-Ups
 - c. Male/Female 2-Mile Run
2. Quehanna Boot Camp Physical Fitness Test Scorecard
3. Quehanna Boot Camp Remedial P/T Checklist
4. Quehanna Boot Camp Weekly Remedial P/T Fitness Test Scorecard
5. Quehanna Boot Camp Physical Fitness Lesson Plan

Introduction

The information in this manual consists of the Physical Fitness Program that is currently being taught at the PENNSYLVANIA DEPARTMENT OF CORRECTIONS QUEHANNA BOOT CAMP.

This information was taken from the United States Army's Master Physical Fitness FM 21-20 and the Marine Corps Institute Manual MC 17107C'. Some of the exercises have been rephased to accommodate the current organization at the Quehanna Boot Camp.

This program develops both the upper and lower body, plus cardio-respiratory endurance. This well organized training program will instill discipline, motivation and team work. It must have strict supervision. Instructors must be able to lead Physical Training with proper commands and knowledge of the exercises.

At the end of each phase, each Inmate will be given a physical fitness tests [sic] using the U.S. Army Physical Readiness Scorecard (See Appendix I). If the Inmate fails this test he/she will be assigned to the Remedial P/T Platoon. At which time, they will not only do their regularly scheduled physical training in the morning, but they will also attend the afternoon session. He/She will stay on this status until they come up to standards and pass the test which will be given to them every weekend.

FORMING FOR P.T.

The Extended Rectangular Formation is used with platoons or companies. It can be formed when platoons are in a line formation (side by side) or a column formation (behind each other).

The instructor should always be centered on the formation when extended. This can be done by having the platoon(s) fall in to the far left of the instructor when facing the platoon. When the formation is extended, it will then be centered on the instructor.

EXTEND TO THE LEFT, "MARCH" — On the command of execution "MARCH", inmates in the right flank file stand fast with their arms extended to the sides at shoulder level. All other inmates will turn to the left and double time forward. After taking a sufficient number of steps, all inmates

will face the front; each has both arms extended to the sides at shoulder level. The distance between the fingertips is approximately 12 inches and dress is right.

ARMS DOWNWARD, "MOVE" — On the command of execution "MOVE", the inmates will lower their arms smartly to their sides.

LEFT, "FACE" — Inmates execute the left face movement.

EXTEND TO THE LEFT, "MARCH" — On the command of execution "MARCH", inmates in the right flank file stand fast with their arms extended to the sides shoulder level. All other inmates will turn to their left and double time forward. After taking the sufficient number of steps, all inmates will face the front; each has both arms extended to the sides at shoulder level. The distance between the fingertips is approximately 12 inches and dress is right.

ARMS DOWNWARD, "MOVE" — On the command of execution "MOVE", all inmates will lower their arms smartly to their sides.

RIGHT, "FACE" — All inmates will execute the right face movement.

FROM FRONT TO REAR, "COUNT OFF" — On the command of execution "OFF", the leading inmate in each column turns his/her head to the right rear and sounds off with "ONE" and faces the front. Each successive column will repeat the actions of the front column and sound off in turn with "TWO", "THREE", "FOUR" and so on.

EVEN NUMBERS TO THE LEFT, "UNCOVER" — On the command of execution "UNCOVER", all even numbered inmates will jump to their left squarely in the center of the interval, bringing their feet together. The unit is now ready for stretching and warm-up exercises.

Upon completion of the stretching and warm-up exercises, the instructor will dismount the P.T. stand and center

himself/herself on the platoon as if it were at normal interval. The instructor will then bring the platoon back to normal interval by giving the following commands.

ASSEMBLE TO THE RIGHT, "MARCH" — On the command of execution "MARCH", all inmates will double time to their original positions before being extended, in column or line formation (at normal interval).

FORMAT FOR P.T. EXERCISES

The following format is used to conduct Physical [sic] Training at Quehanna Boot Camp. After Inmates have been instructed on proper exercises procedure. [sic] Approximately two weeks into the program, step 6,7 and 8 can be deleted from the format.

1. The next exercise is _____. (Inmates repeat the name of the exercise. [sic])
2. It is a _____ count exercise.
3. We will do _____ repetitions [sic] of this exercise.
4. I will count the cadence, you will count the repetitions [sic].
5. You will go to your left, I will go to my right.
6. I will now demonstrate:
7. Stand at Ease
 - (Demonstration)
 - A. Starting position move.

On the command starting position move, describe how to get into the starting position.
 - B. Explain the exercise by the numbers.
 - C. Do exercise in cadence.
 - D. Ask — Are there any questions?
8. Platoon / Squad Attention.
9. Starting position move.
10. In cadence — exercise, 1-2-3-1, 1-2-3-2, etc., 1-2, AND HALT.
11. Recover (Position of attention)
12. Raise Right Hand. Staff/Inmates hold hands in front of them and double time in place until D.I. lowers hand.
13. Repeat No. 1 - 12 for each exercise, until all stretches and exercises are completed.

WARM-UP / STRETCHING

Proper warm-up is needed before each physical training session. This helps to prepare the body for vigorous exercise, and will help prevent injuries. Stretching is a major part of the warm-up procedures.

The following stretching exercises will be used at Quehanna Boot Camp.

1. Neck Stretch
2. One-Arm Side Stretch
3. Ham-String Stretch
4. Ankle Stretch
5. Groin Stretch –
6. Upper Back Stretch

The following pages have detailed instructions on each exercise.

NECK STRETCH

This is a four count exercise.

The commands for this exercise are, In Cadence, Exercise/ Recover.

This exercise is done at a slow cadence. The instructor will go in the opposite direction to create a mirror effect.

The instructor will count the cadence, inmates will count the repetitions.

NOTE: To halt this exercise, the instructor will elevate his/her voice on the last repetition, saying "1, 2, AND HALT!". Inmates will say "AND, HALT!" with the instructor.

Neck Stretch — Starting Position, MOVE.

On the command of execution, "MOVE", spread your legs shoulder width apart, knees slightly bent and keeping your body straight from head to toe. Place your hands on your hips, thumbs pointing towards the small of your back, and elbows will be back.

Action — In Cadence / "Exercise"

On the command of execution "EXERCISE", and for the count of one tilt your head to the left shoulder. For the count of two, tilt your head backwards keeping the rest of your body straight. For the count of three, tilt your head to the right shoulder. For the count of four, return to the starting position. You will stay in cadence with the instructor until all repetitions are completed.

The next commands are "Switch Direction" — "In cadence, EXERCISE". On the command of execution "EXERCISE", and for the count of one, tilt your head to the right shoulder. For the count of two, tilt your head backwards. For the count of three, tilt your head to the left shoulder. For the count of four, return to the starting position. On the command of "RECOVER", you will quickly return to the position of attention. Are there any questions?

ONE ARM SIDE STRETCH

There are no counts to this exercise.

The commands for this exercise are READY—"STRETCH", "AND HALT"/ RECOVER.

Each stretch will last for approximately 10 — 15 seconds.

The instructor will go in the opposite direction to create a mirror effect.

The instructor will call all commands.

To halt this exercise, the instructor will elevate his/her voice on the last repetition by saying "AND HALT". Inmates will say "AND HALT" with the instructor.

ONE ARM SIDE STRETCH — STARTING POSITION/ "MOVE"

On the command of execution, "MOVE", spread your feet shoulder width apart, raise your right arm over your head fingers extended and your left arm down at your side, fingers extended, palm facing the leg.

ACTION — READY, "STRETCH"

On the command of execution "STRETCH", bend your body to the left and hold for approximately 10 - 15 seconds. On the command "AND HALT", move back to the starting position. You will continue until all repetitions are completed for the left side. Next command will be "SWITCH SIDES". Change your position by extending your left arm with your right arm to your side as you did for the first part of the exercise. On the command of "READY — STRETCH", bend your body to the right and hold for approximately 10 - 15 seconds. On the command of "AND HALT", move back to the starting position. You will continue until all repetitions are completed for the right side. On the com-

mand "RECOVER", you will quickly move back to the position of attention. Are there any questions?

HAM STRING STRETCH

There are no counts to this exercise.

The commands for this exercise are "READY — STRETCH", "AND HALT"/ "RECOVER".

Each stretch will last approximately 10 — 15 seconds.

The instructor will go in the opposite direction to create a mirror effect.

To halt this exercise, the instructor will elevate his/her voice on the last repetition by saying, "AND HALT!". The inmates will say "AND HALT!" with the instructor.

The instructor will call all commands.

HAM STRING STRETCH — STARTING POSITION "MOVE"

On the command of execution, "MOVE", take one 30 inch step forward with your left foot, place your right hand on the deck to assist you into the sitting position. Extend your left leg forward, toe pointing upward, your right foot will be tucked in the groin area. Your legs will be flat on the deck.

ACTION — READY, "STRETCH"

On the command of execution, "STRETCH", bend forward from the hips, keeping the back and head in a comfortable straight line, stretching your arms out to the left toe. Hold this stretch for 10 — 15 seconds. On the command "AND HALT!", move back to the starting position. You will continue as commanded until the left side stretches are completed. The next command will be "SWITCH LEGS". Change your position by extending your right leg with the toe pointing upward and tucking your left foot into the groin area. "READY, STRETCH". On the command of execution of "STRETCH", bend forward from the hips, keeping a comfortable straight line with your back and head, stretching your arms out to the right toe. On the command "AND HALT!", move back to the starting position. You will continue until the right leg stretches are completed. On the command, "RECOVER", you will quickly move back to the position of attention. Are there any questions?

ANKLE STRETCH

This is a four count exercise.

The commands for this exercise are IN CADENCE, "EXERCISE"/ "RECOVER".

This exercise is done at a slow cadence.

The instructor will go in the opposite direction to create a mirror effect.

To halt this exercise, the instructor will elevate his/her voice on the last repetition by saying "1, 2, AND HALT!". Inmates will say "AND HALT!" with the instructor.

The instructor will call the cadence, the inmates will count the repetitions.

ANKLE STRETCH — STARTING POSITION, "MOVE!"

On the command of execution "MOVE", take one 30 inch step forward with your left foot, placing your right hand on the deck to assist you into the sitting position. Extend your left leg forward, left toe pointing upward. Move your right leg across the left leg, crossing the right calf on top of your left thigh. Grasp your right toe with your left hand and your ankle with your right hand.

ACTION — IN CADENCE, "EXERCISE"

On the command of execution, "EXERCISE", and for the count of one, start rotating the ankle in a clockwise rotation. For the counts of two and three continue in the clockwise rotation. For the count of four, you should be at the starting position completing one repetition. You will continue until all repetitions are completed. On the command "SWITCH DIRECTIONS" — IN CADENCE, "EXERCISE", on the command of execution of "EXERCISE" and for the count of one, you will rotate your ankle in a counter clockwise [sic] rotation. For the counts of two and three you will continue in the counterclockwise rotation. For the count of four, you should be at the starting position and completing one full repetition. You will continue until all repetitions are completed. The next command will be "SWITCH LEGS". Change your position by extending your right leg forward, toe pointing upward and moving the left leg across the right leg, crossing your left calf on top of your left thigh. Grasp your left toes with your right hand and your ankle with your left hand.

IN CADENCE, "EXERCISE". On the command of execution, "EXERCISE" and for the count of one, you start rotating in a

clockwise rotation. For the counts of two and three, continue rotating in the clockwise rotation. For the count of four, you should be at the starting position, completing one repetition. You will continue in cadence until all repetitions are completed. On the command "SWITCH DIRECTIONS" — IN CADENCE, "EXERCISE" on the command of execution "EXERCISE!", and for the count of one, you will start rotating your ankle in a counter-clockwise [sic] rotation. For the counts of two and three, you will continue in a counter-clockwise [sic] rotation. For the count of four, you should be at the starting position and completing one full repetition. You will continue in cadence until all repetitions are completed. On the command "RECOVER", you will quickly move to the position of attention. Are there any questions?

GROIN STRETCH

There are no counts to this exercise.

The commands for this exercise are READY, "STRETCH" — AND "HALT!" / "RECOVER".

This exercise should last 10 — 15 seconds per stretch.

To halt this exercise, the instructor will elevate his/her voice on the last repetition by saying AND "HALT!". The inmates will say AND "HALT!" with the instructor.

The instructor will call all commands.

GROIN STRETCH — STARTING POSITION, "MOVE!"

On the command STARTING POSITION, "MOVE!", you will take one 30 inch step forward with your left foot, placing your right hand on the deck to assist you into the sitting position. Grasp your toes with your hands and pull your toes inward close to the torso. Elbows will be inside of your legs touching your thighs.

ACTION: READY, "STRETCH!"

On the command of execution, "STRETCH", bend forward from your hips, pushing down slightly with your elbows and hold for 10 - 15 seconds. The next command will be AND, "HALT!". On this command return to the starting position. You will continue until all repetitions are completed. On the command "RECOVER", you will quickly move back to the position of attention. Are there any questions?

UPPER BACK STRETCH

There are no counts to this exercise.

The commands for this exercise are READY, "STRETCH" — AND "HALT!" / "RECOVER".

This exercise should last 10 - 15 seconds per stretch.

To halt this exercise, the instructor will elevate his/her voice on the last repetition by saying AND "HALT!". The inmates will say AND "HALT!" with the instructor.

The instructor will call all the commands.

UPPER BACK STRETCH—STARTING POSITION, "MOVE!"

On the command of execution, "MOVE!", spread your feet approximately shoulder width apart, extending your arms out parallel with the deck in front of your chest, fingers will be interlocked with your palms facing outwards.

ACTION: READY, "STRETCH!"

On the command of execution "STRETCH!", push the upper portion of your body forward, keeping your hips stationary and stretching the upper back muscles. On the command AND "HALT!", return back to the starting position. You will continue until all repetitions are completed. The next command you will receive is "RECOVER!". You will then move quickly back to the position of attention. Are there any questions?

CARDIOVASCULAR

Cardiovascular endurance is needed to help the body deliver nutrients and oxygen needed for muscular activity and transports waste products from the cells.

The following cardiovascular exercises will be used at the Quehanna Boot Camp.

1. Side Straddle Hop
2. Side Bender
3. Turn and Bounce
4. Turn and Bend
5. Stationary Run
6. Squat Thrust

The following pages have detailed instructions on cardiovascular exercises.

SIDE STRADDLE HOP

This [sic] a four count exercise.

The commands for this exercise are, IN CADENCE, "EXERCISE" / "RECOVER".

This exercise is done at a fast cadence.

To halt this exercise, the instructor will elevate his/her voice by saying 1, 2, AND, "HALT!". Inmates will say AND, "HALT!" with the instructor.

The instructor will count the cadence, inmates will count the repetitions.

THE SIDE STRADDLE HOP: STARTING POSITION, "MOVE!"

On the command of execution, "MOVE!", you will stay at the position of attention.

ACTION: IN CADENCE, "EXERCISE!"

On the command of execution, "EXERCISE!", and for the count of one, jump up slightly moving your legs slightly more than shoulder's [sic] width apart, at the same time swing your arms overhead and clap your hands together. For the count of two, jump up slightly and swinging your arms sideward and downward while bringing your feet together to the starting position. For the count of three, repeat the actions for count one, and for count four, repeat the actions for count two, completing one repetition. You will continue in cadence until all repetitions are completed. The next command will be "RECOVER!" at which time you will adjust yourself to the position of attention. Are there any questions?

SIDE BENDER

This [sic] a eight count exercise.

The commands for this exercise are, IN CADENCE, "EXERCISE" and "RECOVER".

This exercise is done at a slow to moderate cadence.

The instructor will go in the opposite direction to create a mirror effect.

To Halt this exercise, the instructor will elevate his/her voice by saying, 1, 2, 3, 4, 5, 6, AND, "HALT!". The inmates will say AND, "HALT!" with the instructor.

The instructor will count the cadence, the inmates will count the repetitions.

SIDE BENDER — STARTING POSITION, "MOVE!"

On the command of execution, "MOVE!", spread your feet shoulder width apart, raise your arms overhead with your palms facing to the front and touching, keeping elbows and knees locked throughout the exercise.

ACTION: INCADENCE, [sic] "EXERCISE!"

On the command of execution, "EXERCISE!", and for the count of one, bend to the left as far as possible; recover slightly. For the count of two and three, repeat the actions of count one. For the count of four, recover sharply to the starting position. For the count of five, bend to the right as far as possible; recover slightly. For the counts of six and seven, repeat the actions in count five. For the count of eight, recover sharply to the starting position. You will continue in cadence until all repetitions are completed. The next command is "RECOVER!". On the command of recover sharply return to the position of attention. Are there any questions?

JA-36

TURN AND BOUNCE



This is an eight count exercise.

The commands for this exercise are IN CADENCE, "EXERCISE" and "RECOVER!".

This exercise is done at a slow cadence.

The instructor will go in the opposite direction to create a mirror effect.

To halt this exercise, the instructor will elevate his/her voice by saying, 1, 2, 3, 4, 5, 6, AND, "HALT!". The inmates will say AND, "HALT!" with the instructor.

The instructor will call the cadence, inmates will count the repetitions.

TURN AND BOUNCE — STARTING POSITION, "MOVE!"

On the command of execution, "MOVE!", spread your feet shoulder width apart. Extend your arms sidward [sic] at shoulder level with palms facing up. Head and hips face the front throughout the exercise. Keep the arms parallel with the deck and knees and elbows locked.

ACTION: IN CADENCE, "EXERCISE!"

On the command of execution, "EXERCISE", and for the count of one, turn sharply to your left as far as possible, recovering slightly. For the counts of two and three, repeat the action for count one. For the count of four, recover sharply to the starting position. For the count of five, turn sharply to your right, recovering slightly. For the counts of six and seven, repeat the count of five. For the count of eight, recover sharply to the starting position. You will continue until all repetitions are completed. On the command "RECOVER", you will quickly move back to the position of attention. Are there any questions?

JA-37

TURN AND BEND



This is a four count exercise.

The commands for this exercise are IN CADENCE, "EXERCISE" and "RECOVER".

This exercise is done in a slow cadence.

The instructor [sic] will go in the opposite direction to create a mirror effect.

To halt this exercise, the instructor will elevate his/her voice on the last repetition by saying 1, 2, AND, "HALT!".

The inmates will say AND, "HALT!" with the instructor.

The instructor will count the cadence, the inmates will count the repetitions.

TURN AND BEND — STARTING POSITION, "MOVE!"

On the command of execution "MOVE!", spread your feet shoulder width apart, extending your arms overhead, keeping your arms straight and palms facing each other.

ACTION: IN CADENCE, "EXERCISE!"

On the command of execution, "EXERCISE!", and for the count of one, turn your trunk to the left and bend forward over the left thigh, trying to touch the ground with your fingertips outside the left foot, keeping your left leg straight. For the count of two, recover to the starting position. For the count of three, turn your trunk to the right and bend forward over the right thigh, trying to touch the ground with your fingertips outside the right foot, keeping your right leg straight. For the count of four, return to the starting position. You will continue in cadence until all repetitions are completed. Are there any questions?

STATIONARY RUN



There are two repetitions of counts for this exercise.

There are several commands for this exercise, which are explained below.

This exercise is done at a fast cadence.

The instructor calls all commands.

STATIONARY RUN — STARTING POSITION, "MOVE!"

On the command of execution "MOVE!", keep your feet at the position of attention, your elbows stay at your side, raise your arms parallel to the deck. Make a fist with your hands, thumbs facing upwards.

ACTION: INCADENCE, [sic] "EXERCISE!"

On the command of execution "EXERCISE", start running in place; lift your left foot first. Follow the instructor's commands; he/she will count two repetitions of the cadence. For example; "1, 2, 3, 4; 1, 2, 3, 4.". The instructor will then give informal commands such as "FOLLOW ME!"; "Run on the toes and balls of the feet, keeping the back straight"; "SPEED IT UP!"; "INCREASE TO A SPRINT!"; "RAISE YOUR KNEES HIGH, LEAN FORWARD AND PUMP YOUR ARMS VIGOROUSLY"; and "SLOW DOWN". To halt this exercise, the instructor will count two repetitions of cadence, "1, 2, 3, 4; 1, 2, AND, HALT!". When counting, the instructor will only count when the left foot strikes the deck.

SQUAT THRUST

This is a four count exercise.

The commands for this exercise are IN CADENCE, "EXERCISE"

This exercise is done at a moderate cadence.

To halt this exercise, the instructor will elevate his/her voice on the last repetition by saying 1, 2, AND, "HALT!".

The inmates will say AND, "HALT!" with the instructor.

The instructor will count the cadence, inmates will count the repetitions.

SQUAT THRUST — STARTING POSITION, "MOVE!"

The starting position for this exercise is the position of attention.

ACTION: IN CADENCE, "EXERCISE!"

On the command of execution "EXERCISE!", and for the count of one, place your hands on the deck approximately 8-10 inches in front of your feet, bending your knees but keeping your back straight. For the count of two, thrust your legs backwards until your body is fully straight from your head to your feet, heels will be together, toes on the deck. For the count of three, return to the position in count one. For the count of four, quickly move back to the starting position. You will continue until all repetitions are completed. Are there any questions?

STRENGTH

Muscular strength is the greatest amount of force a muscle or muscle group can exert in one movement. The human body has over 400 voluntary muscles that move the skeleton. The following strength exercises used at the Quehanna Boot Camp will help strengthen these muscles.

1. PUSH-UPS
2. SIT-UPS
3. LEG LIFTS
4. PULL-UPS
5. KNEE BENDER

PUSH-UPS

This is a four count exercise.

The commands for this exercise are, IN CADENCE, "EXERCISE" and "RECOVER".

This exercise is done at any speed cadence.

To halt this exercise, the instructor will elevate his/her voice on the last repetition by saying 1, 2, AND, "HALT!".

The inmates will say AND, "HALT!" with the instructor.

The instructor will call the cadence, inmates will count the repetitions.

PUSH-UPS, BY THE NUMBERS — STARTING POSITION, "MOVE!"

On the command of execution, "MOVE!", and for the count of one, place your hands on the deck shoulder width apart, bending at the waist. For the count of two, [sic] thrust your legs backwards with your heels together and your toes on the deck. Body should be straight from head to heels.

ACTION — IN CADENCE, "EXERCISE!"

On the command of execution, "EXERCISE!", and for the count of one, lower your body until the chest is approximately 4-6 inches from the deck. For the count of two, return to the starting position. For the count of three, lower your body until your chest is approximately 4-6 inches off the deck. For the count of four, return to the starting position. You will continue in cadence until all repetitions are completed. The next command you will receive will be "BY THE NUMBERS, RECOVER!". On the command of execution of "RECOVER!", and for the count of one, you will bring your feet back under your body approximately 18 inches from your hands. For the count of two, quickly move back to the position of attention. Are there any questions?

SIT-UPS



STARTING POSITION

This is a two count exercise.

The commands for this exercise are IN CADENCE, "EXERCISE!" and "RECOVER!".

This exercise is done at a slow cadence.

To halt this exercise, the instructor will elevate his/her voice on the last repetition by saying, "1, 2, AND, HALT!". Inmates will say "AND, HALT!" with the instructor.

The instructor will call the cadence, inmates will count the repetitions.

SIT-UPS: STARTING POSITION, "MOVE!"

On the command of execution, "MOVE!", take one thirty inch

step forward with your left foot, place your right hand on the [sic] deck to assist you into the sitting position. Lie flat on the deck, raise your knees so that your feet are flat on the deck close to the buttocks. Cross your right arm over your left arm on your chest. A second inmate can hold your feet.

ACTION: IN CADENCE, "EXERCISE!"

On the command of execution, "EXERCISE!", and for the count of one, raise your upper body until your elbows touch the knees. For the count of two, go back to the starting position. You will continue until all repetitions [sic] are completed. The next command you will receive is "RECOVER!". You will quickly move back to the position of attention. Are there any questions?

LEG LIFTS



FRONT VIEW



SIDE VIEW

This is a four count exercise.

The commands for this [sic] exercise are IN CADENCE, "EXERCISE!" and "RECOVER!".

This exercise is done at a slow cadence.

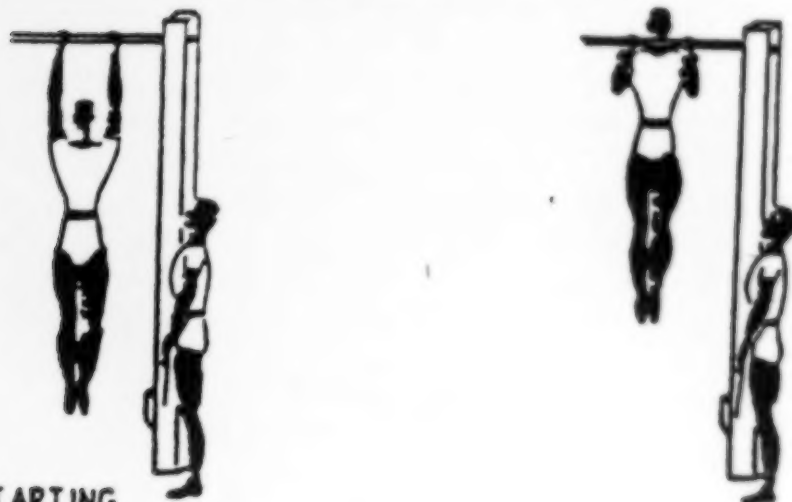
To halt this exercise the instructor will elevate his/her voice on the last repetition by saying, 1, 2, AND, "HALT!". The inmates will say AND, "HALT!" with the instructor. The instructor will call the cadence, the inmates will count the repetitions.

LEG LIFTS — STARTING POSITION, "MOVE!"

On the command of execution, "MOVE!", take one step forward with your left foot and place your right hand on the deck to assist you into the sitting position. Lie flat on your back, arms extended to the side, palms flat on the deck. Legs are flat on the deck, heels together.

ACTION: IN CADENCE, "EXERCISE!"

On the command of execution, "EXERCISE!", and for the count of one, raise both legs together off of the deck approximately 6 inches. For the count of two, spread your legs outward more than shoulder width apart, 6 inches off the deck. For the count of three, bring your legs back together 6 inches off of the deck. For the count of four, lower your legs to the starting position. You will continue in cadence until all repetitions are completed. Are there any questions?

PULL-UPS / CHIN-UPS

**STARTING
POSITION**

There are no counts to this exercise.

STARTING POSITION:

The participants may be assisted to the bar by a step up, or by jumping. The hand placement for the pull-up is: Palms facing inward or to the rear. The hand placement for the chin-up is: Palms facing outward or to the front.

NOTE: The spacing distance for both exercises is six inches between the palms.

ACTION:

The bar is grasped either palms facing forward or to the rear, the arms are fully extended, and feet free from the ground. One rep-

etition consists of raising the body with the arms until the chin is above the bar and lowering the body until the arms are extended. Kicking motions are not permitted to complete the repetition.

KNEE BENDER

This is a four count exercise.

The commands for this exercise are IN CADENCE, "EXERCISE!" and "RECOVER!"

This exercise is done at a moderate cadence.

To halt this exercise, the instructor will elevate his/her voice on the last repetition by saying, 1, 2, AND, "HALT!". The inmates will say AND, "HALT!" with the instructor.

The instructor will call the cadence, the inmates will count the repetitions.

KNEE BENDER — STARTING POSITION, "MOVE!"

On the command of execution, "MOVE!", spread your feet approximately shoulder width apart, put your hands on your hips with thumbs in the small of the back and elbows back.

ACTION: IN CADENCE, "EXERCISE!"

On the command of execution, "EXERCISE!", and for the count of one, bend your knees; lean slightly forward at the waist and slide your arms along the outside of the legs until your fingers touch the top of your calves [sic]. For the count of two, recover to the starting position. For the count of three, bend your knees; lean slightly forward at the waist and slide your arms along the outside of your legs until your fingers touch the top of your calves [sic]. For the count of four, return to the starting position. You will continue [sic] in cadence until all repetitions are completed. Upon the command "RECOVER!", you will quickly return to the position of attention. Are there any questions?

RUNNING

Running enables the body to improve the transport of oxygen, which in turn enhances the conditioning of the muscles. The Quehanna Boot Camp program is composed of double-time marching and various types of running.

DOUBLE-TIME MARCHING

Double-time marching is at the rate of 180 steps per minute; each step is approximately 36 inches long. This differs from the Quick Time, which is 120 steps per minute. Runers [sic] should keep in step, placing their feet flat on the ground. However, there should not be a stamping motion; there should be as slight a jolt as possible. Double-time is like a jog; the difference is that in a jog, the feet are lifted off the ground and running motion is smooth. In double-time, the feet skim the ground an [sic] there is no bounce.

WIND SPRINTS

Wind sprints improve caridiorespiratory [sic] endurance and conditions and strengthens the legs. It consists of 40-50 yard sprints at 85-90 percent of maximum effort. This type of running is conducted by squads. Each squad leader places his squad in a file on a flat course. Th [sic] einstructor [sic] gives the command "READY...., GO!" or ready, whistle. On this command, the entire squad will sprint to the finish line and then run back to the starting line behind the other squads.

QUEHANA RUNNING CHANTSMY GRANDMA

My Grandma turned 91, she did her PT just for fun.
My Grandma turned 92, she did her PT better than you.
My Grandma turned 93, she did her PT just like me.
My Grandma turned 94, she ran four miles and then some more.

My Grandma turned 95, she did her PT to stay alive.
My Grandma turned 96, she did her PT just for kicks.
My Grandma turned 97, she up, she died and went to heaven.
She meet [sic] Saint Peter at the Pearly Gates, said St. [sic] Peter
I hope I'm not late.
Saint Peter said with a big ole grin, get down Granny and knock out ten.

Sgt. McMahon, QBC

MICHAEL JACKSON

Michael Jackson came to town, Coco Cola turned him down. Pesi [sic] Cola burned him up, now he's drinking 7-Up.

Sgt. Davies, QBC

DONT [sic] DO DRUGS

I know a homeboy back on the block, his sister's a junkie and he sells rock.

One fatal lesson he never learned, the rock may smoke but he's going to burn.

Liquor and drugs there's just no way, the QBC's the only way.

Captain Griffith, QBC

SISTER KNOWS BEST

I know a girl who lives on a hill, she wouldn't do it but her brother will.

Just what it is that her brother will do, he'll go to bootcamp just like you.

Liquor and drugs there's just know [sic] way, the QBC's the only way.

Captain Griffith, QBC

IN SHAPE

I can run to Rockview just like this, All [sic] the way to Rockview and never quit.

I can run to Huntindon [sic] just like this, All [sic] the way to Huntingdon and never quit.

I can run to Camphill [sic] just like this, All [sic] the way to Camphill [sic] and never quit.

Sgt. Bennett, QBC

CO CADENCE

CO, CO, Don't [sic] arrest me, arrest that homeboy behind the tree.

He smoked the crack, I drank the wine, now he's doing the double-time.

CoI Slippey, QBC

A DAY AT THE QBC

Up in the morning at the break of day, I don't like it — no way!

Push-ups, Sit-ups [sic], two mile run; D and C just for fun.

Marching and drilling everyday [sic]; I can't take it — no way!

Eat my breakfast too damn soon; Hungry [sic] as hell by noon.

CoI Wagner, QBC

LOOK AT ME MA

Mama, Mama can't you see, the QBC is the life for me.

Ain't no drugs or alcohol, just some racks and a dining hall.

CoI Kyle, QBC

THANK GOD FOR THE QBC

Went for a run and what did I see, a big ole rattler lookin' at me.
His body was coiled he was ready to strike, before he could I was outta sight.

Said PT, Saved [sic] ME!

On my run I spotted a bear, but he ran off when he saw my hair.

Said Haircut [sic] Saved [sic] my butt!

On my run I saw Commander Wertz, I said can I please quit this double-time hurts.

He said Bull shit [sic], No [sic] can quit.

Sgt. Bennett, QBC

ADDITIONAL ACTIVITIES

Several activities may be used to add variety to the QBC Fitness Program. Most of these activities may be done on the PT Grinder, but can be moved to softer ground. Exceptions are going to be the Boot Camp Confindece [sic] Course. [sic] Some of the following will be used to put variety into the QBC Fitness Program as the inmates progress.

1. Grass Drills
2. Squad Competitions
3. Obstacle Course

The following pages will give you the guidelines to these additional activities, they are only guidelines and can be used at instructor's will.

GRASS DRILLS

Grass Drills consist of movements that feature rapid changes in the body position. These are vigorous drills that exercise all major muscle groups. Inmates will respond to commands as fast as possible and perform at top speed. Though no cadence is called, inmates continue doing multiple repetitions of each exercise until the next command is given. The purpose of grass drills is to decrease reaction time, develop muscular endurance, increase strength and improve cardio-respiratory [sic] endurance. Since these drills are extremely strenuous, there will be a 10 to 15 minute time limit to these exercises.

A warm-up activity should precede grass drills, and a cool down period should follow them.

To continue with the role model concept of this program, all instructors will do these exercises with the inmates.

The commands peculiar to grass drills are given in rapid succession with out [sic] the usual preparatory commands. To prevent confusion, the instructor should give commands sharply to distinguish them from comments or words of encouragement. as [sic] soon as the inmates are familiar with the drill, they will do all exercises as vigorously and rapidly as they can. Each exercise is done continuously until the next command is given. Anything less than top speed performance is ineffective.

Inmates do not have to come to the position of attention once the drills start. The command "UP" is used to halt the drill for instructions or for rest. At this command, the inmates [sic] will assume a relaxed standing position.

Grass drills can be done in a short period. For example, they may be used when only a few minutes are available to exercise, or they may be combined with another activity. Grass drills are an excellent occasional substitute for running when time is limited.

The following paragraphs explain formations, starting with positions and movements executed in grass drills.

STARTING POSITIONS

The drills start from the "GO" position. Other basic positions are "FRONT", "BACK" and "STOP". (See figure 1-1.)

*GO! Running in place (top speed) on the toes and the balls of the feet with knees raised up high, arms pumping and body bent forward slightly at the waist.

*FRONT! Lying prone with elbows bent (alongside the body) palms flat on the ground directly under the shoulders, legs straight and together and head toward the instructor.

*BACK! Lying flat on the back with arms extended near the sides on the ground with palms facing down, legs straight and together and feet toward the instructor.

*STOP! Assuming the football — lineman stance: feet spread apart and staggered, left arm across left thigh, right arm straight, knuckles on the ground, head up and back parallel to the ground.

To assume the front or back position from the standing, go or stop position, the inmate should change positions vigorously and rapidly. (See figure 1-1)

To change from front to the back position, an inmate should do the following:

1. Take several short steps to the right or left.
2. Lift the arm on the side toward which the feet move.
3. Thrust the legs vigorously to the front.

To change from the back to the front position, an inmate should sit up quickly and place both [sic] hands on the ground to the right or left of the legs. The inmate should then take several short steps to the rear on the side opposite the hands. When the feet are opposite the hands, the legs should be thrust vigorously to the rear and the body lowered to the ground.

BOUNCING BALL From the front position, push-up and support your body on the hands, which are shoulder width apart and the feet together. Keep the back and legs in line and the knees straight. Bounce up and down in a series of short upward springs from the hands, hips and feet simultaneously.

BICYCLE From the back position raise the legs and hips. Keep the elbows on the ground and support the hips with the hands. Move the legs vigorously as if pedaling a bicycle.

KNEE BEND From the stop position, do half knee bends with the feet on line and the hands at the sides. Make sure that the knees do not bend more than 90 degrees.

ROLL RIGHT OR LEFT From the front position continue to roll in the direction commanded until another command is given. Then return to the front position.

ROCKER In the front position, clasp the hands behind the back, arch the body and hold the head back. Start rocking, using the front part of the trunk as a rocker. (The leg extension may be substituted for this exercise.)

BOUNCE AND CLAP HANDS The procedure is the same as for the bouncing ball; However [sic], in this drill, while in the air, clap the hands. (The push-up may be substituted for this exercise).

LEG SPREADER From the back position, raise the legs until the heels are 10 - 12 inches from the ground. Legs remain straight, toes skyward. Spread them apart as far as possible; then put them together. Keep the head off the ground. Place the hands (palm down) at the side. Open and close the legs as fast as possible. (The sit-up may be substituted for this exercise).

FORWARD ROLL For forward rolls from the stop position, place both hands on the ground, tuck the head and roll forward. Keep the head tucked while rolling.

The instructor may use any of the above mentioned [sic] exercises in any order he/she desires. It is very important to keep track of the time when doing these exercises. On the following pages, you will find some examples of how the grass drills can be used.

STARTING POSITIONS FOR GRASS DRILLS



GRASS DRILLS



COOL DOWN

After the activity period, whether it is running, strength training or a combination of these, inmates must cool down properly. The cool down gradually slows down the heart rate after vigorous activity. During exercise, the blood moves faster than usual through [sic] the one way valves of the heart, through the veins and back to the heart by the muscles squeezing action.

After jogging, inmates should walk and stretch for at least 4 minutes. The cool down period should continue until the heart rate returns to normal and profuse sweating stops.

Cool down is a continuation of the training, but at a lower intensity. Quehanna Boot Camp uses the following cool down exercises:

1. Walking/ Quick time marching (2-5 minutes)
2. Neck Stretch
3. Upper Back Stretch
4. Groin Stretch
5. Ham-string Stretch

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JA-54

Army Physical Fitness Test Scorecard*For use of this form, see FM 21-20; the proponent is TRADOC.*

Print Name (Last, First, Middle Initial)

Test One			Test Two		
Date	Grade	Age	Date	Grade	Age
Height	Weight	Go No Go	Height	Weight	Go No Go
Unit	Weather Temp		Unit	Weather Temp	
PU Raw Score	Initials	Points	PU Raw Score	Initials	Points
SU Raw Score	Initials	Points	SU Raw Score	Initials	Points
2M Raw Score	Initials	Points	2M Raw Score	Initials	Points
Alternate Event		Total Points	Alternate Event		Total Points
Time _____ Go/No Go			Time _____ Go/No Go		
APFT OIC/NCOIC Signature and Rank			APFT OIC/NCOIC Signature and Rank		
Comments:			Comments:		

Special Instructions: Use ink.

Legend:**PU — Push-ups****SU — Sit-ups****2M — 2-mile run****APFT — Army Physical Fitness Test**

DA FORM 705, MAY 87

JA-55

Data Required by the Privacy Act of 1974

Title: DA Form 705

Authority: 10 USC 301.2(g)

Principal purpose: record of individual
scores on physical fitness eventsMandatory or voluntary disclosure and effect
on individual not providing information:
mandatory — individuals not providing infor-
mation cannot be rated/scored.

Social Security Number

Sex

Test Three			Test Four		
Date	Grade	Age	Date	Grade	Age
Height	Weight	Go No Go	Height	Weight	Go No Go
Unit	Weather Temp		Unit	Weather Temp	
PU Raw Score	Initials	Points	PU Raw Score	Initials	Points
SU Raw Score	Initials	Points	SU Raw Score	Initials	Points
2M Raw Score	Initials	Points	2M Raw Score	Initials	Points
Alternate Event		Total Points	Alternate Event		Total Points
Time _____ Go/No Go			Time _____ Go/No Go		
APFT OIC/NCOIC Signature and Rank			APFT OIC/NCOIC Signature and Rank		
Comments:			Comments:		

EDITION OF JUN 86 WILL BE USED UNTIL EXHAUSTED

JA-56

Army Physical Fitness Test Scorecard*For use of this form, see FM 21-20; the proponent is TRADOC.*

Print Name (Last, First, Middle Initial)

Test Five			Test Six		
Date	Grade	Age	Date	Grade	Age
Height	Weight	Go No Go	Height	Weight	Go No Go
Unit	Weather Temp		Unit	Weather Temp	
PU Raw Score	Initials	Points	PU Raw Score	Initials	Points
SU Raw Score	Initials	Points	SU Raw Score	Initials	Points
2M Raw Score	Initials	Points	2M Raw Score	Initials	Points
Alternate Event		Total Points	Alternate Event		Total Points
Time _____ Go/No Go			Time _____ Go No Go		
APFT OIC/NCOIC Signature and Rank			APFT OIC/NCOIC Signature and Rank		
Comments			Comments		

Special Instructions Use ink.

Legend:**PU — Push-ups****SU — Sit-ups****2M — 2-mile run****APFT — Army Physical Fitness Test**

DA FORM 705, MAY 87

JA-57

Data Required by the Privacy Act of 1974

Title DA Form 705

Authority 10 USC 301.2(g)

Principal purpose record of individual
scores on physical fitness eventsMandatory or voluntary disclosure and effect
on individual not providing information:
mandatory — individuals not providing infor-
mation cannot be rated/scored

Social Security Number

Sex

Test Seven			Test Eight		
Date	Grade	Age	Date	Grade	Age
Height	Weight	Go No Go	Height	Weight	Go No Go
Unit	Weather Temp		Unit	Weather Temp	
PU Raw Score	Initials	Points	PU Raw Score	Initials	Points
SU Raw Score	Initials	Points	SU Raw Score	Initials	Points
2M Raw Score	Initials	Points	2M Raw Score	Initials	Points
Alternate Event		Total Points	Alternate Event		Total Points
Time _____ Go/No Go			Time _____ Go/No Go		
APFT OIC/NCOIC Signature and Rank			APFT OIC/NCOIC Signature and Rank		
Comments			Comments		

EDITION OF JUN 86 WILL BE USED UNTIL EXHAUSTED

MALE/FEMALE SIT-UP									
Repetitions	AGE GROUP	17-21	22-26	27-31	32-36	37-41	42-46	47-51	52+
92		100							
91		99							
90		98							
89		97							
88		96							
87		95							
86		94							
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50		58							
49		57							

INDICATES
FEMALE
STANDARDS

49	57	65	73	78	79	81	84	87	88
48	56	64	72	77	78	80	83	86	85
47	55	63	71	76	77	79	82	85	84
46	54	62	70	75	76	78	81	84	83
45	53	61	69	74	75	77	80	83	82
44	52	60	68	73	74	76	79	82	81
43	51	59	67	72	73	75	78	81	80
42	50	58	66	71	72	74	77	80	79
41	49	57	65	70	71	73	76	79	78
40	48	56	64	69	70	72	75	78	77
39	47	55	63	68	69	71	74	77	76
38	46	54	62	67	68	70	73	76	75
37	45	53	61	66	67	69	72	75	74
36	44	52	60	65	66	68	71	74	73
35	43	51	59	64	65	67	70	73	72
34	42	50	58	63	64	66	69	72	71
33	41	49	57	62	63	65	68	71	70
32	40	48	56	61	62	64	67	70	69
31	39	47	55	60	61	63	66	69	68
30	38	46	54	59	60	62	65	68	67
29	37	45	53	58	59	61	64	67	66
28	36	44	52	57	58	60	63	66	65
27	35	43	51	56	57	59	62	65	64
26	34	42	50	55	56	58	61	64	63
25	33	41	49	54	55	57	60	63	62
24	32	40	48	53	54	56	59	62	61
23	31	39	47	52	53	55	58	61	60
22	30	38	46	51	52	54	57	60	59
21	29	37	45	50	51	53	56	59	58
20	28	36	44	49	50	52	55	58	57
19	27	35	43	48	49	51	54	57	56
18	26	34	42	47	48	50	53	56	55
17	25	33	41	46	47	49	52	55	54
16	24	32	40	45	46	48	51	54	53
15	23	31	39	44	45	47	50	53	52
14	22	30	38	43	44	46	49	52	51
13	21	29	37	42	43	45	48	51	50
12	20	28	36	41	42	44	47	50	49
11	19	27	35	40	41	43	46	49	48
10	18	26	34	39	40	42	45	48	47
9	17	25	33	38	39	41	44	47	46
8	16	24	32	37	38	40	43	46	45
7	15	23	31	36	37	39	42	45	44
6	14	22	30	35	36	38	41	44	43
5	13	21	29	34	35	37	40	43	42
4	12	20	28	33	34	36	39	42	41
3	11	19	27	32	33	35	38	41	40
2	10	18	26	31	32	34	37	40	39
1	9	17	25	30	31	33	36	39	38

SCORING STANDARDS

Scoring standards are used for converting raw scores to point scores after test events are completed.

Repetitions ΔG CDue		MALE/FEMALE PUSH-UP						
17 21		22 26	27 31	32 36	37 41	42 46	47 51	52*
82	100							
81	99							
80	98							
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49	67							
48	66							

47	55	89	67	91	69	93	74	95	75	99	41	85	100	100	91
46	64	88	66	90	68	92	73	94	74	98	60	84	99	90	8
45	63	87	65	89	67	91	72	93	73	97	79	83	98	89	4
44	62	86	64	88	66	90	71	92	72	96	78	82	97	88	8
43	61	85	63	87	65	89	70	91	71	95	77	81	96	87	4
42	60	84	62	86	64	88	69	90	70	94	76	80	95	86	8
41	59	83	61	85	63	87	68	89	69	93	75	79	94	85	4
40	58	82	60	84	62	86	67	88	68	92	74	78	93	84	8
39	57	81	59	83	61	85	66	87	67	91	73	77	92	83	4
38	56	80	58	82	60	84	65	86	65	89	71	75	91	82	8
37	55	79	57	81	59	83	64	85	64	88	70	74	90	81	4
36	54	78	56	80	58	82	63	84	63	87	69	73	89	80	8
35	53	77	55	79	57	81	62	83	62	86	68	72	88	79	4
34	52	76	54	78	56	80	61	82	61	85	67	71	87	78	8
33	51	75	53	77	55	79	60	81	60	84	66	70	86	77	4
32	50	74	52	76	54	78	59	80	59	83	65	69	85	76	8
31	49	73	51	75	53	77	58	79	58	82	64	68	84	75	4
30	48	72	50	74	52	76	57	78	57	81	63	67	83	74	8
29	47	71	49	73	51	75	56	77	56	80	62	66	82	73	4
28	46	70	48	72	50	74	55	76	55	79	61	65	81	72	8
27	45	69	47	71	49	73	54	75	54	78	60	64	80	71	4
26	44	68	46	70	48	72	53	74	53	77	59	63	79	70	8
25	43	67	45	69	47	71	52	73	52	76	58	62	78	69	4
24	42	66	44	68	46	70	51	72	51	75	57	61	77	68	8
23	41	65	43	67	45	69	50	71	50	74	56	60	76	67	4
22	40	64	42	66	44	68	49	70	49	73	55	59	75	66	8
21	39	63	41	65	43	67	48	69	48	72	54	58	74	65	4
20	38	62	40	64	42	66	47	68	47	71	53	57	73	64	8
19	37	61	39	63	41	65	46	67	46	70	52	56	72	63	4
18	36	60	38	62	40	64	45	66	45	69	51	55	71	62	8
17	35	59	37	61	39	63	44	65	44	68	50	54	70	61	4
16	34	58	36	60	38	62	43	64	43	67	49	53	69	60	8
15	33	57	35	59	37	61	42	63	42	66	48	52	68	59	4
14	32	56	34	58	36	60	41	62	41	65	47	51	67	58	8
13	31	55	33	57	35	59	40	61	40	64	46	50	66	57	
12	30	54	32	56	34	58	39	60	39	63	45	49	65	56	
11	29	53	31	55	33	57	38	59	38	62	44	48	64	55	
10	28	52	30	54	32	56	37	58	37	61	43	47	63	54	
9	27	51	29	53	31	55	36	57	36	60	42	46	62	53	
8	26	50	28	52	30	54	35	56	35	59	41	45	61	52	
7	25	49	27	51	29	53	34	55	34	58	40	44	60	51	
6	24	48	26	50	28	52	33	54	33	57	39	43	59	50	
5	23	47	25	49	27	51	32	53	32	56	38	42	58	49	
4	22	46	24	48	26	50	31	52	31	55	37	41	57	48	
3	21	45	23	47	25	49	30	51	30	54	36	40	56	47	
2	20	44	22	46	24	48	29	50	29	53	35	39	55	46	
1	19	43	21	45	23	47	28	49	28	52	34	38	54	45	

JA-62

MALE/FEMALE 2-MILE RUN							
Time AGI Group	17 21	22 26	27 31	32 36	37 41	42 46	47 51
11 54	100 POINTS						
12 00	99						
12 06	98						
12 12	97						
12 18	96						
12 24	95						
12 30	94						
12 36	93						
12 42	92						
12 48	91						
12 54	90						
13 00	89						
13 06	88						
13 12	87						
13 18	86						
13 24	85						
13 30	84						
13 36	83						
13 42	82						
13 48	81						
13 54	80						
14 00	79						
14 06	78						
14 12	77						
14 18	76						
14 24	75						
14 30	74						
14 36	73						
14 42	72						
14 48	71						
14 54	70						
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MALE/FEMALE 2-MILE RUN

Time	Age Group	17 21	22 26	27 31	32 36	37 41	42 46	47 51
18:30		18	32	46	55	62	66	71
18:36		16	30	44	54	61	65	70
18:42		14	28	42	53	60	64	69
18:48		12	26	40	52	58	63	68
18:54		10	24	38	51	56	62	67
19:00		8	22	36	50	54	61	66
19:06		6	20	34	48	52	60	65
19:12		4	18	32	46	50	58	64
19:18		2	16	30	44	48	56	63
19:24			14	28	42	46	54	62
19:30			12	26	40	44	52	61
19:36			10	24	38	42	50	60
19:42			8	22	36	40	48	58
19:48			6	20	34	38	46	56
19:54			4	18	32	36	44	54
20:00			2	16	30	34	42	52
20:06				14	28	32	40	50
20:12				12	26	30	38	48
20:18				10	24	28	36	46
20:24				8	22	26	34	44
20:30				6	20	24	32	42
20:36				4	18	22	30	40
20:42				2	16	20	28	38
20:48					14	18	26	36
20:54					12	16	24	34
21:00					10	14	22	32
21:06					8	12	20	30
21:12					6	10	18	28
21:18					4	8	16	26
21:24					2	6	14	24
21:30						4	12	22

21:36	16	30	32	70	2	80	10	20	89
21:42	14	28	30	69		79	8	18	88
21:48	12	26	28	68		78	6	16	87
21:54	10	24	26	67		77	4	14	86
22:00	8	22	24	66		76	2	12	85
22:06	6	20	22	65		75		10	84
22:12	4	18	20	64		74		8	83
22:18	2	16	18	63		73		6	82
22:24		14	16	62		72		4	81
22:30		12	14	61		71		2	80
22:36		10	12	60		70			79
22:42		8	10	59		69			78
22:48		6	8	58		68			77
22:54		4	6	57		67			76
23:00		2	4	56		66			75
23:06				55		65			74
23:12				54		64			73
23:18				53		63			72
23:24				52		62			71
23:30				51		61			70
23:36				50		60			69
23:42				48		58			68
23:48				46		56			67
23:54				44		54			66
24:00				42		52			65
24:06				40		50			64
24:12				38		48			63
24:18				36		46			62
24:24				34		44			61
24:30				32		42			60
24:36				30		40			58
24:42				28		38			56
24:48				26		36			54
24:54				24		34			52
25:00				22		32			50
25:06				20		30			48

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Page 1

QUEHANNA BOOT CAMP LESSON PLAN

COURSE TITLE: Physical Fitness Training

PREPARED BY: Sgt. McMahon & Sgt. Mattive

DATE: 3-03-92

TIME FRAME:

1 hour

TARGET POPULATION:

Correctional Staff

PERFORMANCE
OBJECTIVES:

To perform basic structure
and guidelines and to lead
an effective physical
training program

EVALUATION
PROCEDURES:

Supervisor's Evaluation

REVIEWED/APPROVED: _____

MALE/FEMALE 2-MILE RUN						
Time	401 1.00	17 21	22 26	27 31	32 36	37 41
25:12	46	36	28	18	28	46
25:18	44	34	26	16	26	44
25:24	42	32	24	14	24	42
25:30	40	30	22	12	22	40
25:36	38	28	20	10	20	38
25:42	36	26	18	8	18	36
25:48	34	24	16	6	16	34
25:54	32	22	14	4	14	32
26:00	30	20	12	2	12	30
26:06	28	18	10		10	28
26:12	26	16	8		8	26
26:18	24	14	6		6	24
26:24	22	12	4		4	22
26:30	20	10	2		2	20
26:36	18	8				18
26:42	16	6				16
26:48	14	4				14
26:54	12	2				12
27:00	10					10
27:06	8					8
27:12	6					6
27:18	4					4
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★ U.S. Government Printing Office: 1987-183-799/69092

LESSON PLAN OUTLINE

- I. Introduction
- II. Formations
- III. Warm-up (stretching)
- IV. Cardiovascular
- V. Strength
- VI. Running
- VII. Cool Down Period

Lesson Plan:
Cover Page 2

TRAINING METHODS:

Classroom Environment/Demonstration

TRANSPARENCIES/
VISUAL AIDS:

Projector

HANDOUTS/STUDENT
MATERIALS:EQUIPMENT
NEEDED:

P.T. Uniform

REFERENCES:

U.S. Army
FM 21-20

COURSE: Physical Fitness
TrainingPAGE: 1

NOTES AND METHODOLOGY	CONTENT
I. Introduction	<p>A. This program develops both the upper and lower body, plus cardiorespiratory endurance. Ref: United States Army Master Physical Fitness, FM21-20</p> <p>B. The program is divided in six separate phases:</p> <ol style="list-style-type: none"> 1. Formation 2. Warm-up 3. Cardiovascular 4. Strength 5. Running 6. Cool-down <p>C. Physical training develops both mind and body. A well organized [sic] training program will instill discipline, motivation and team work. A physical training program must be well planned and organized. It must have <u>good</u> supervision. Instructors <u>must</u> be able to lead physical training with proper commands and knowledge of the exercise.</p> <p>D. Physical training is conducted daily to motivate inmates. This practice will instill a high degree of self-confidence and discipline. This practice will set a positive tone for the day's activities.</p>
II. Form for P.T.	<p>A. The Extended Rectangular Formation is used with platoons or companies. It can be formed when platoons are in a line formation (side by side) or column formation (behind each other).</p>

- B. The instructor always should be centered on the formation when extended. This can be done by having the platoon(s) fall into the far left of the instructor when facing the formation. When the formation is extended, it will then be centered on the instructor.
- C. The following commands are used:
1. Extend to The Left, March — At this command, inmates in the right flank file stand fast with their arms extended to the sides at shoulder level. All other inmates turn to the left and double-time forward. After taking a specific number of steps, all inmates face the front; each has both arms extended to the sides at shoulder level. The distance between fingertips is about 12 inches, and dress is right.
 2. Arms Downward, Move — At this command, the inmates lower their arms smartly to their sides, to the position of attention.
 3. Left Face — Inmates execute the left-face movement.
 4. Extend to the Left, March — At this command inmates in the right flank file stand fast with their arms extended to the sides. All other inmates turn to the left and double-time forward. Spacing is same as above, and dress is right.

5. Arms Downward, Move — Inmates lower their arms smartly to their sides, to the position of attention.
6. Right Face — Inmates execute the right-face movement.
7. From Front to Rear, Count Off — At this command, the leading inmate in each column turns his or her head to the right rear, calls off "one," and faces the front. Successive inmates in each column call off in turn, "two," "three," "four," "five," and so on.
8. Even Numbers to the Left, Uncover At this command, all even-numbered inmates jump to the left squarely in the center of the interval, bringing their feet together. The unit is now ready for stretching and warm-up exercises.
9. Assemble to the Right, March — At this command, all inmates double-time to their original positions in column or line formation.

III. Warm-up (Stretching)

- A. Proper warm-up is needed before each physical training session. This helps to prepare the body for vigorous exercise, and will help prevent injuries. Stretching is a major part of the warm-up procedures.
- B. The following stretching exercises will be used at QBC:
 1. Neck stretch *See fig. [sic] #2
 2. One-arm side stretch *See Fig. #1
 3. Hamstring stretch *See Fig. #3 & 14
 4. Ankle stretch *See Fig. #4
 5. Groin stretch *See Fig. #5
 6. Lower back stretch *See Fig. #6
 7. Long sit *See Fig. #7
 8. Single/double knee to chest *Fig. 8 [sic]

IV. Cardiovascular

- A. The following cardiovascular exercises will be used at QBC:
 1. Side-straddle hop *See Fig. #9
 2. Side bender *See Fig. #10
 3. Knee bender *See Fig. #11
 4. Turn and bounce *See Fig. #12
 5. Turn and bend *See Fig. #13
 6. Jogging in place *See Fig. #14

V. Strength

- A. The following strength exercises will be used at QBC:
 1. Push-ups *See Fig. #15
 2. Sit-ups *See Fig. #16
 3. Leg lifts

Physical Fitness

Page 5

VI. Running

A. The following procedure will be used to take the QBC staff on a run from the PT formation:

1. Assemble to the right, march
2. March the inmates into position for the run
3. Give the command "Double time, march"
4. Call running cadence throughout the run
5. When run is complete, call "Quick time, march"

B. Running the inmates

1. Keep the inmates in formation
2. The pace should be kept so that the formation stays together
3. Ensure that the formation stays right and covered
4. Cool inmates down with a small march after run

VII. Cool Down Period

A. Cool down is an important part of physical training. It allows the heart rate to gradually slow down.

B. During exercise period the blood moves faster than normal. If the proper cool down period is not sufficient, this may result in heart and/or brain damage.

C. Cool down is a continuation of the training but at a lower intensity.

Physical Fitness

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D. Some of the following are good exercises for cooling down:

1. Walking/quick time marching, 2-5 minutes
2. Neck stretch
3. Low back stretch
4. Single knee to chest
5. Long sit

E. The cool down should continue until the heart rate is below 100 beats per minute or until heavy sweating stops. Apply 4 to 6 minutes in length.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

RONALD R. YESKEY,)	
Plaintiff,)	
vs.)	
THE COMMONWEALTH OF	)	Civil Action No. 94-2180
PENNSYLVANIA DEPARTMENT	)	Judge Alan N. Bloch/
OF CORRECTIONS,	)	Magistrate Judge Sensenich
JOSEPH D. LEHMAN,	)	Re: Doc. # 19
JEFFREY A. BEARD, Ph.D.,)	
JEFFREY K. DITTY, DOES)	
NUMBER 1 THROUGH 20,)	
INCLUSIVE,)	
Defendants)	

MAGISTRATE JUDGE'S REPORT
AND RECOMMENDATION

I. RECOMMENDATION

It is recommended that this action be transferred to the United States District Court for the Middle District of Pennsylvania.

II. REPORT

Plaintiff, Ronald R. Yeskey, presently an inmate at the State Correctional Institution at Greensburg, commenced this action pursuant to the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12101, et seq., and the Civil Rights Act of 1871, 42 U.S.C. § 1983. Named as defendants are the Commonwealth of Pennsylvania Department of Corrections and its former Commissioner Joseph D. Lehman, Superintendent Jeffrey A. Beard of the State Correctional Institution at Camp Hill, Jeffrey K. Ditty, Director of the Central Diagnostic and Classification Center of the State Correctional Institution at Camp Hill, and unidentified John Doe defendants. Plaintiff complains that defendants violated

his federally secured rights under the ADA as well as his constitutional rights under the Fifth, Eighth and Fourteenth Amendments, and Article I, section 1 of the Pennsylvania Constitution. He seeks a declaratory judgment, money damages, injunctive relief, costs of prosecuting this claim and any other relief deemed appropriate by this court.

Plaintiff alleges that in May 1994, he was sentenced to serve a term of eighteen to thirty-six months with the recommendation of the sentencing judge that he be placed in the Department of Corrections' Motivational Boot Camp program. He contends that while confined at the Classification and Diagnostic Center at the State Correctional Institution at Camp Hill ("SCI-Camp Hill") on July 1, 1994, he was advised that he was not eligible for the Motivation Boot Camp program because of his history of hypertension. Although he made repeated requests for placement in the program, these requests were denied. Further, he was allegedly denied admission to any type of alternative program.

Plaintiff argues that the Motivational Boot Camp is a service, program, or activity of a public entity within the meaning of the ADA, and that he was denied admission solely because of a disability. He argues that the defendants failed to use criteria for eligibility to their program which provides a qualified individual with a disability an equal opportunity for participation in the boot camp program. Plaintiff complains that this denied him equal protection of the laws and violated the ADA. Additionally, he complains that defendants acted with deliberate indifference subjecting him to cruel and unusual punishment under the Eighth Amendment.

The defendants have filed a motion to dismiss, or in the alternative, a motion to transfer this action. In this motion, defendants argue that venue is improper in this district because all of the identified defendants reside in Harrisburg, Pennsylvania, and because SCI-Camp Hill, where the alleged misconduct occurred, is located in the Middle District of Pennsylvania. This court must first determine whether venue is proper in this district before considering whether plaintiff has alleged a claim under Rule 12(b)(6). Madara v. Hall, 916 F.2d 1510, 1514 n.1 (11th Cir. 1990).

At the time this action was filed, plaintiff was confined at the State Correctional Institution at Greensburg. He argues that venue is proper in this district because the harm he suffered resulting from the defendants' alleged misconduct is to be confined in a penal facility located in this district.

Venue for actions commenced under 42 U.S.C. § 1983 and the ADA where there is no diversity of citizenship is governed by 28 U.S.C. § 1391(b). Gilbert v. Texas Mental Health and Mental Retardation, 888 F. Supp. 775, 776 (N.D. Tx. 1995). Section 1391(b) provides that a lawsuit may be filed in:

(1) a judicial district where any defendant resides, if all defendants reside in the same State, (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or (3) a judicial district in which any defendant may be found, if there is no district in which the action may otherwise be brought.

The purpose of venue statutes is "to protect the defendant against the risk that a plaintiff will select an unfair or inconvenient place of trial." LeRoy v. Great Western United Corporation, 443 U.S. 173, 184 (1979). In LeRoy, the Court first confronted a multi-party/multi-district venue problem and interpreted the "claim arose" provision of 28 U.S.C. § 1391 (b) as follows:

Without deciding whether this language adopts the occasionally fictive assumption that a claim may arise in only one district, it is absolutely clear that Congress did not intend to . . . give [plaintiff] an unfettered choice among a host of different districts.

Id. at 184-85. The Court then balanced all the factors presented by both parties and found that "the bulk of the relevant evidence and witnesses" favored venue in one district. Id. at 186. This district court has interpreted the test in LeRoy as a "weight of the contacts" which would favor one venue over another. Seilon Inc. v. Lamb, 559 F. Supp. 563 (W.D. Pa. 1983).

The "claim arose" provision found in the venue statute and used in LeRoy was amended in 1990. The statute now states that venue is proper where "a substantial part of the events or omis-

sions giving rise to the claim occurred." This amendment permits venue in more than one district provided that each has a substantial relationship to the action. Cottman Transmission Sys. v. Martino, 36 F.3d 291, 294 (3d Cir. 1994).

After the amended section was enacted, the United States District Court for the Eastern District of Pennsylvania continued to use the "weight of the contacts" test to determine venue under section 1391. Eastman v. Initial Investments, Inc., 827 F. Supp. 336, 338 (E.D. Pa. 1993). Under the "weight of the contacts" test "venue would be proper in the district having the most significant ties to the claim." Broadcasting Company of the Carolinas v. Flair Broadcasting Corporation, 892 F.2d 372, 376 (4th Cir. 1989).

Plaintiff argues that his incarceration within this district is a sufficient basis for this court to find that venue is proper here. In Flanagan v. Shively, 783 F.Supp. 922 (M.D. Pa.), aff'd, 980 F.2d 722 (3d Cir. 1992), the only link the inmate established to the Middle District was his incarceration in that district. He did not allege any events or acts by defendants occurring within that district. The court found that plaintiff's incarceration within the district was insufficient to justify venue under section 1391(e)(2). Id. at 935. Thus, the court found that the inmate had failed to establish venue.

The basis of plaintiff's claim is that defendants denied him admission to a motivational boot camp which had been recommended by his sentencing judge because he suffered from hypertension. The decision to deny plaintiff admission was made by defendants in the Harrisburg area. Additionally, plaintiff has alleged that the criteria established by the Department of Corrections and its commissioner and used for admission was not fair. Again, this agency and the commissioner are not located in this district. For purposes of venue, the United States District Court for the Eastern District of Pennsylvania has held that "a state official's residence is located at the state capitol, even where branch offices of the state official's department are maintained in other parts of the state." Wilson v. Pennsylvania State Police, 1995 WL 129202, at *1 (E.D. Pa. Mar. 24, 1995) (citations omitted). Thus, the commissioner's residence is also located in the Middle District of Pennsylvania. Plaintiff's only basis for com-

mencing this action here is due to his present incarceration in this district. This is not a sufficient basis for venue. The substantial portions of the events giving rise to plaintiff's claim occurred in the Middle District of Pennsylvania. Under the "weight of the contacts" test, venue is proper in the Middle District and not this district.

When venue is improper, as in this lawsuit, the Court may, in the interest of justice, transfer the case to a district court in which it could have been brought. 28 U.S.C. § 1406(a). Under the facts set forth in the complaint, this lawsuit could have been brought in the United States District Court for the Middle District of Pennsylvania.

Pursuant to 28 U.S.C. § 1406 (a), the Court should transfer this lawsuit to the United State [sic] District Court for the Middle District of Pennsylvania.

In accordance with the Magistrates Act, 28 U.S.C. § 636 (b)(1)(B) and (C), and Rule 72.1.4 (B) of the Local Rules for Magistrates, the parties are allowed ten (10) days from the date of service to file objections to this report and recommendation.

/s/ Ila Jeanne Sensenich

ILA JEANNE SENSENICH
U.S. Magistrate Judge

Dated: October 18, 1995

cc: The Honorable Alan N. Bloch
United States District Judge

L. Abraham Smith, Esquire
P.O. Box 1644
Greensburg, PA 15601-7644

Gloria A. Tischuk
Deputy Attorney General
4th Floor, Manor Complex
564 Forbes Avenue
Pittsburgh, PA 15219

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

RONALD R. YESKEY,)
	Plaintiff)
	) Civil Action No. 94-2180
vs.	) Judge Alan N. Bloch/
	) Magistrate Judge Sensenich
THE COMMONWEALTH OF)
PENNSYLVANIA DEPARTMENT OF	) Re: Doc. # 19
CORRECTIONS,)
JOSEPH D. LEHMAN,)
JEFFREY A. BEARD, Ph.D.,)
JEFFREY K. DITTY,)
DOES NUMBER 1 THROUGH 20,)
INCLUSIVE,)
	Defendants)

MEMORANDUM ORDER

Plaintiff's complaint was received by the Clerk of Court on December 21, 1994, and was referred to United States Magistrate Judge Ila Jeanne Sensenich for pretrial proceedings in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The magistrate judge's report and recommendation, filed on October 19, 1995, recommended that this action be transferred to the United States District Court for the Middle District of Pennsylvania. The parties were allowed ten (10) days from the date of service to file objections. Service was made on plaintiff by delivery to counsel for plaintiff, L. Abraham Smith, Esquire, and on defendants. No objections have been filed. After review of the pleadings and documents in the case, together with the report and recommendation, the following order is entered:

AND NOW, this 9th day of November, 1995;

IT IS HEREBY ORDERED that this action is transferred to the United States District Court for the Middle District of Pennsylvania.

The report and recommendation of Magistrate Judge Sensenich, dated October 18, 1995, is adopted as the opinion of the court.

/s/ Alan N. Bloch

Alan N. Bloch

United States District Judge

cc: Ila Jeanne Sensenich
U.S. Magistrate Judge

L. Abraham Smith, Esquire
P.O. Box 1644
Greensburg, PA 15601-7644

Gloria A. Tischuk
Deputy Attorney General
4th Floor, Manor Complex
564 Forbes Avenue
Pittsburgh, PA 15219

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

RONALD R. YESKEY,

Plaintiff :

: CIVIL ACTION

: NO. 1:95-2125

v. :

: (CALDWELL, J.)

: (DURKIN, M.J.)

COMMONWEALTH OF PA, et al.,

Defendants :

REPORT AND RECOMMENDATION

This case is before the court on the defendants' motion to dismiss the plaintiff's complaint. (Doc. No. 1).

By way of background, the plaintiff, an inmate at the State Correctional Institution, Greensburg, Pa, originally filed this civil rights action pursuant to 42 U.S.C. § 1983 and the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12101, et seq. in the Western District of Pennsylvania on December 21, 1994. By order of the same date, the plaintiff was permitted to proceed in forma pauperis and process was issued.

On February 7, 1995, the plaintiff requested an entry of default against the defendants for their failure to file an answer to the complaint. On March 7, 1995, the defendants filed a motion to set aside the default judgment. On April 7, 1995, the plaintiff consented to the defendants' motion to set aside default judgment and by order dated April 19, 1995, the entry of default was set aside.

On April 24, 1995, the defendants filed a motion to dismiss or, in the alternative, to transfer the case. After being granted an enlargement of time, on May 25, 1995, the defendants filed a brief in support of their motion to dismiss or transfer. On June 20, 1995, the plaintiff filed a brief in opposition to the defendants' motion to dismiss or transfer.

On October 19, 1995, a magistrate judge in the Western District issued a report in which only the motion to transfer was

addressed, and recommended that the defendants' motion to transfer the case to the United States District Court for the Middle District of Pennsylvania be granted. In that report, the motion to dismiss was not addressed. By order dated November 9, 1995, the magistrate judge's report and recommendation was adopted. On December 13, 1995, the case was transferred to the Middle District of Pennsylvania where it was filed on December 14, 1995. On December 15, 1995, the case was received in the magistrate judge's office with the defendants' April 24, 1995, motion to dismiss still pending. Thus, before the court is the defendants' motion to dismiss.

The plaintiff alleges that in May 1994, he was sentenced to serve a term of eighteen to thirty-six months with the recommendation of the sentencing judge that he be placed in the Department of Corrections' Motivational Boot Camp program. He contends that on July 1, 1994, while confined at the Classification and Diagnostic Center at the State Correctional Institution at Camp Hill, (SCI-Camp Hill), he was advised that he was not eligible for the Motivation Boot Camp program because of his history of hypertension. Although he made repeated requests for placement in the program, these requests were denied. Further, he was allegedly denied admission to any type of alternative program. (Doc. No. 1). The plaintiff argues that the Motivational Boot Camp is a service, program, or activity of a public entity within the meaning of the ADA, and that he was denied admission solely because of a disability. He argues that the defendants failed to use criteria for eligibility to their program which provides a qualified individual with a disability an equal opportunity for participation in the boot camp program. The plaintiff complains that this denied him equal protection of the laws and violated the ADA. Additionally, he complains that defendants acted with deliberate indifference subjecting him to cruel and unusual punishment under the Eighth Amendment. (Id.).

The plaintiff seeks damages as well as an injunction releasing him from incarceration at some unidentified "chronological point when plaintiff would have been released had he been admitted to and successfully completed the Boot Camp Program" as well as "submit plans" to accomplish this release and pay attorney fees, costs and expenses". (Id.).

By statute, the motivational boot camp is

"A program in which eligible inmates participate for a period of six months in a humane program for motivational boot camp programs which shall provide for rigorous physical activity, intense regimentation and discipline, work on public projects, substance abuse treatment services licensed by the Department of Health, ventilation therapy, continuing education, vocational training and prerelease counseling. [sic]

61 Pa.C.S.A. §§ 1121-1129; § 1123 (1994 Supp.).

An eligible inmate may make application to the motivational boot camp colcotion [sic] committee for permission to participate in the motivational boot camp. *Id.* at § 1126(a). If the selection committee determines that an inmate's participation in the program is consistent with the safety of the community, the welfare of the applicant, the programmatic objectives and the rules and regulations of the department, the committee shall forward the application to the secretary or his designee for approval or disapproval. *Id.* at § 1126(b). However, satisfying the above qualifications to participate does not mean the inmates will automatically be permitted to participate in the program. *Id.* at § 1126(d).

With respect to the plaintiff's claim under the American [sic] with Disabilities Act, (ADA), that the Motivational Boot Camp is a service, program, or activity of a public entity within the meaning of the ADA, and that he was denied admission solely because of a disability, Title II of the ADA, provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by such entity." 42 U.S.C. § 12132.

The regulations implementing the ADA define a "qualified individual with a disability" as:

"An individual with a disability who, with or without reasonable modifications to rules, policies or practices, . . . meets the essential eligibility requirements for the . . . participation in programs or activities provided by a public entity."

28 C.F.R. § 35.104 (1993).

The ADA seeks "to assure even handed [sic] treatment and the opportunity for [disabled] individuals to participate in and benefit from programs [receiving financial assistance]. [sic] Southeastern Community College v. Davis, 442 U.S. 397 (1979). The "evenhanded treatment" requirement does not, however, impose an affirmative obligation on public entities to expand existing programs but only that disabled individuals receive the same treatment as those who are not disabled. P.C. v. McLaughlin, 913 F.2d 1033, 1041 (2d Cir. 1990).

In an action brought pursuant to 42 U.S.C. § 1983, a plaintiff must allege and prove that the defendants deprived him of a right secured by the Constitution and laws of the United States. Maine v. Thiboutot, 448 U.S. 1 (1980); Baker v. McCollan, 443 U.S. 137 (1979). The plaintiff claims that the Motivational Boot Camp is a service, program, or activity of a public entity within the meaning of the ADA, and that he was denied admission solely because he is disabled.

However, whether or not the plaintiff is a qualified person with a disability pursuant to the ADA is of no moment, since it is well settled that a state prisoner, whether disabled, or not, does not have a protected liberty interest in matters of classification or particular custody status, and none is provided by the ADA or federal law. Hewitt v. Helms, 459 U.S. 460 (1983); Montanye v. Haymes, 427 U.S. 236, 242 (1976); Stephany v. Wagner, 835 F. 2d 197 (3d Cir. 1987); Lull v. Arroyo, 785 F. Supp. 508, 509-10 (E.D. Pa. 1991) (holding that pre-release programs in Pennsylvania penal institutions do not create expectations or entitlements amounting to a "liberty" interest for due process purposes); see also Wright v. Cuyler, 517 F. Supp. 637 (E.D. Pa. 1981); Reider v. Commonwealth of Pennsylvania, 502 A.2d 272 (1985). Moreover, an inquiry by this Court into matters of prison administration, such as classification or custody status, would necessarily interfere with the administration's right to police its penal system. These administration [sic] determinations have consistently and correctly been left to the prison management's sound discretion.

Specifically, with respect to the boot camp, the statutory provisions which govern admission to the boot camp grant unqualified discretion to the Department of Corrections classification staff as they consider candidates. Courts may interfere "only

when the deprivations of prison confinement impose conditions of such onerous burdens as to be of constitutional dimensions." McNeil v. Latney, 382 F. Supp. 161, 162 (E.D. Va. 1974), quoting Breeden v. Jackson, 457 F.2d 578, 580 (4th Cir. 1972); Pope v. Williams, 426 F. Supp. 279 (E.D. Pa. 1971). Thus, "as long as the conditions or degree of confinement to which the prisoner is subjected is within the sentence imposed upon him and is not otherwise violative of the constitution, the Due Process Clause does not in itself subject an inmate's treatment by prison authorities to judicial oversight." Montanye, 427 U.S. at 242.

The refusal to allow the plaintiff into the motivational boot camp program fails to rise to the level of an "onerous burden" such that it is of constitutional dimensions. The Act, itself, unequivocally provides that participation in the program is not dictated and that "satisfying the above qualifications to participate does not mean the inmates will automatically be permitted to participate in the program." 61 Pa.C.S.A. § 1126(d). Thus, even if the plaintiff had not been disqualified due to his medical condition, he would not be assured that he would participate.

Thus, since the plaintiff has not been deprived of a right, privilege or immunity secured by the Constitution or laws of the United States, he has failed to state a claim, see Maine v. Thiboutot, 448 U.S. 1 (1980) and the complaint should be dismissed pursuant to Fed.R.Civ.P. 12(b)(6).

To the extent that the plaintiff may be attempting to pursue an equal protection claim asserting that he has been unconstitutionally discriminated against, his pleading is lacking in important ways. As the case law interpreting this constitutional guarantee reflects, in order to present a claim of this type, a complaint must assert that a plaintiff, who is a member of a traditionally protected class, has been the object of intentional discrimination motivated by his being a member of that class and that, as a result of this discrimination, he has been treated differently than others who are similarly situated but who are not members of the class. See, e.g., Washington v. Davis, 426 U.S. 229 (1976).

The plaintiff's complaint does not do this. First, it does not indicate that he is a member of any recognized "protected class" for equal protection purposes. But even if this were not the case, it does not show the requisite intentional discrimination associ-

ated with class membership since the decision that the plaintiff could not engage in the rigorous physical activity required of boot camp participants was a rational and medically based decision, as opposed to the critical element, intentional discrimination, required to state an Equal Protection Claim. McNabola v. Chicago Transit Auth., 10 F.3d 501, 513 (7th Cir. 1993).

Finally, with respect to the plaintiff's claim that his denial of entry into the boot camp violated his Eighth Amendment right to be free from cruel and unusual punishment, not every harsh and unpleasant condition experienced by a prisoner gives rise to and [sic] Eighth Amendment claim. Rather, as the Supreme Court observed, it is now a "settled rule" that it is "the unnecessary and wanton infliction of pain. . . [which] constitutes cruel and unusual punishment forbidden by the Eighth Amendment." Hudson v. McMillian, 503 U.S. 1, 112 S.Ct. 995 (1992), quoting Ingraham v. Wright, 430 U.S. 651 (1977).

In order to establish the unnecessary and wanton infliction of pain, an inmate must establish both: (a) an objective determination that the actions or conditions at issue are significantly egregious to rise to the level of an Eighth Amendment violation, and (b) a subjective determination that the defendants acted with a culpable state of mind. Hudson, *supra*. Generally, the subjective determination is judged by a standard of "deliberate indifference." Wilson v. Seiter, 501 U.S. 294 (1991).

While the plaintiff claims that his Eighth Amendment rights were violated when he was refused entry into the boot camp program, he has not alleged any facts describing inhumane conditions or that he suffered unnecessary or wanton infliction of pain. The complaint contains no facts which set forth conditions sufficiently egregious to rise to the level of an Eighth Amendment violation. In addition, the plaintiff fails to allege that any of the individual defendants were deliberately indifferent. Thus, the plaintiff has failed to state an Eighth Amendment claim.

On the basis of the foregoing,

IT IS RESPECTFULLY RECOMMENDED
THAT the defendants' motion to dismiss, (Doc. No. 1)
be granted.

/s/ Raymond J. Durkin

RAYMOND J. DURKIN

United States Magistrate Judge

Dated: January 22, 1996

JA-90

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

RONALD R. YESKEY, :
Plaintiff :
: CIVIL ACTION NO. 1:95-2125
: (CALDWELL, J.)
v. : (DURKIN, M.J.)
: COMMONWEALTH OF PA, et al., :
Defendants :

NOTICE

FILED
SCRANTON
JAN 23 1996

TO: L. Abraham Smith, Esquire
P.O. Box 1644
Greensburg, PA 15601-7644

PER SIG.
DEPUTY CLERK

Gloria A. Tischuk, Deputy Attorney General
OFFICE OF ATTORNEY GENERAL
4th Floor, Manor Complex
564 Forbes Avenue
Pittsburgh, PA 15219

NOTICE IS HEREBY GIVEN that the undersigned has entered the following: **Report and Recommendation of Magistrate Judge Durkin dated 01/22/96.**

Any party may obtain a review of the magistrate judge's above proposed determination pursuant to Rule 72.31, M.D.PA, which provides: **72.31 Review of Case-Dispositive Motions and Prisoner Litigation - 28 U.S.C. Sec. 636(b)(1)(B).**

Any party may object to a magistrate judge's proposed findings, recommendations, or report, under subsections 72.4, .5, and .6 of these rules, supra, within ten (10) days after being served with a copy thereof. Such party shall file with the Clerk of Court, and serve on the magistrate judge and all parties, written objections which shall specifically identify the portions of the proposed

JA-91

findings, recommendations or report to which objection is made and the basis for such objections. The briefing requirements set forth in Rule 72.30 shall apply. A judge shall make a de novo determination of these portions of the report or specified proposed findings or recommendations to which objection is made and may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge, however, need conduct a new hearing only in his or her discretion or where required by law, and may consider the record developed before the magistrate judge, making his or her own determination on the basis of that record. The judge may also receive further evidence, recall witnesses, or recommit the matter to the magistrate judge with instructions.

/s/ Raymond J. Durkin
RAYMOND J. DURKIN
United States Magistrate Judge

Dated: January 22, 1996

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

RONALD R. YESKEY,)	
	Plaintiff,)
	)	CIVIL ACTION NO.
	)	1:95-2125
vs.	)	(CALDWELL, J.)
)	
COMMONWEALTH OF)	
PENNSYLVANIA, <u>et al.</u> ,)	
Defendants	)	(DURKIN, M.J.)

**PLAINTIFF'S STATEMENT OF OBJECTIONS TO
MAGISTRATE JUDGE'S REPORT AND
RECOMMENDATION PURSUANT TO
RULE 72.31, M.D.Pa.**

Plaintiff, Ronald R. Yeskey, by and through his attorney, L. Abraham Smith, Esquire, brings this Statement of Objections to the Magistrate Judge's Report and Recommendation dated January 22, 1996, which recommended that the defendants' motion to dismiss be granted.

I. The report and recommendation mischaracterizes and impermissibly commingles the clearly separate and distinct elements of a claim pursuant to the Americans with Disabilities Act (42 U.S.C. §12101, et seq.) and those of a claim under the Civil Rights Act (42 U.S.C. §1983).

a.) In order for a state prisoner to state a claim pursuant to the ADA, he need only demonstrate that he was denied access to a service, program or activity of a public entity; he need not allege that he had a constitutional right to participate in the program in question.

b.) In order for a state prisoner to state a claim pursuant to the Section 1983 of the Civil Rights Act (42 U.S.C. §1983), it is sufficient to state that the plaintiff's rights established by the ADA were violated under color of state law.

Respectfully submitted,

DATED: February 6, 1996

/s/ L. Abraham Smith

L. Abraham Smith, Esquire
Attorney for Plaintiff.

Pa. I.D. #69020

P.O. Box 1644

Greensburg, PA 15601-7644

(412) 423-8614

JA-94

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

RONALD R. YESKEY,)
Plaintiff,)
) CIVIL ACTION NO.
) 1:95-2125
vs.) (CALDWELL, J.)
)
COMMONWEALTH OF)
PENNSYLVANIA, et al.,)
Defendants) (DURKIN, M.J.)

CERTIFICATE OF SERVICE

I, **L. ABRAHAM SMITH**, Esquire, hereby certify that on February 6, 1996, I caused to be served a true and correct copy of the foregoing document entitled **Plaintiff's Statement of Objections to Magistrate Judge's Report and Recommendation Pursuant to Rule 72.31, M.D.Pa.** by depositing same in the United States Mail, first-class postage prepaid to the following:

R. Douglas Sherman, Esquire
Deputy Attorney General
Office of the Attorney General
15th Fl., Strawberry Square
Harrisburg, PA 17120

/s/ L. Abraham Smith

L. Abraham Smith, Esquire
Attorney for Plaintiff

DATE: February 6, 1996

JA-95

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

RONALD R. YESKEY, :
Plaintiff :
:
vs. : CIVIL ACTION
:
COMMONWEALTH OF : NO. 1: CV-95-2125
:
PENNSYLVANIA, et al., :
Defendants :

MEMORANDUM

I. Introduction and Background.

The plaintiff, Ronald R. Yeskey, an inmate at SCI-Greensburg, Pennsylvania, has filed objections to the report of the magistrate judge which recommended that the defendants' motion to dismiss under Fed. R. Civ. P. 12(b)(6) be granted. The named defendants are the Pennsylvania Department of Corrections, Joseph D. Lehman, the Department's Commissioner, Jeffrey A. Beard, the Superintendent at SCI-Camp Hill, Pennsylvania, and Jeffrey K. Ditty, the Director of the Central Diagnostic and Classification Center at Camp Hill. (John Doe defendants one through twenty have also been sued.)

The plaintiff filed this action alleging that the refusal to allow him into a prison boot camp program because of high blood pressure violated his rights under Title II of the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12131-12165; his fourteenth amendment right to equal protection; his eighth amendment right (as guaranteed under the fourteenth amendment) to be free from cruel and unusual punishment; and his right to due process as guaranteed under Article I, § 1 of the Pennsylvania Constitution. The plaintiff invokes 42 U.S.C. § 1983 in connection with his federal claims. He seeks damages and declaratory and injunctive relief, including an injunction requiring the defendant to release

the plaintiff from confinement on the date he would have been released if he had been allowed into the boot camp program.

Because we are dealing with a motion to dismiss, we must accept as true the factual allegations in the complaint and construe any inferences to be drawn from them in the plaintiff's favor. See *Kost v. Kozakiewicz*, 1 F.3d 176 (3d Cir. 1993). With this standard in mind, we set forth the background to this litigation, as the plaintiff alleges it.

In May 1994, the plaintiff was sentenced in state court after a guilty plea to eighteen to thirty-six months imprisonment. (Complaint, ¶ 9). The sentencing court recommended his placement in the state's boot camp program which would have allowed him to be released on parole if he successfully completed the six-month program. (*Id.*, ¶ 10). On July 1, 1994, while the plaintiff was housed at SCI-Camp Hill awaiting classification, he was refused entry into the boot camp program "due to a medical history of hypertension (on medication)." (*Id.*, ¶ 11). He was also refused entry into "any alternative program offering to disabled persons . . . the same benefits as the Motivational Boot Camp Program." (*Id.*, ¶ 12). He then filed suit, setting forth the causes of action noted above.¹

II. Procedural Background.

The defendants moved to dismiss all of the claims. In regard to the ADA, they made two arguments. First, the plaintiff had no right under state law to admission to the program so even if he had not been denied entrance on the basis of his high blood pressure, the plaintiff cannot establish that he would have been admitted to the program in any event. Second, the ADA does not require accommodation that would destroy the essential nature of a program. Since rigorous physical activity is essential to the boot camp program, plaintiff cannot be accommodated since his hypertension prevents him from being physically active. In regard to the equal protection claim, they argued that the decision to exclude him was a rational one based on his condition. In regard to relief under section 1983, they argued that the Department

¹ The case was filed in the Western District of Pennsylvania but was transferred here on motion of the defendants.

could not be sued because the eleventh amendment bars suit against the state and because the Department is not a "person" (using the language of the section) who can be sued under it. Finally, in regard to the state constitutional claim, they argued that we should not retain jurisdiction once the federal claims were gone and that, in any event, state law immunized all of the defendants from this claim.

In his report the magistrate judge recommended that the motion be granted. Noting that admission to the boot camp was discretionary with Department officials, he disposed of the ADA claim as follows:

[W]hether [sic] or not the plaintiff is a qualified person with a disability pursuant to the ADA is of no moment, since it is well settled that a state prisoner, whether disabled, or not, does not have a protected liberty interest in matters of classification or particular custody status, and none is provided by the ADA or federal law. [citations omitted]. Moreover, an inquiry by this Court into matters of prison administration, such as classification or custody status would necessarily interfere with the administration's right to police its penal system. These administration (sic) determinations have consistently and correctly been left to the prison management's sound discretion.

(magistrate judge's report at pps. 5-6) (brackets added). The magistrate judge then found the equal protection claim deficient by reasoning that: (1) disabled persons are not a class protected by the clause; and (2) the defendants had not intentionally discriminated because they did not refuse him entrance on the basis of his membership in a disfavored group but because of his high blood pressure. The magistrate judge next concluded that the eighth amendment claim was invalid because the eighth amendment only protects against the unnecessary and wanton infliction of pain and refusal of entry into the program does not satisfy this standard. The magistrate judge did not address the supplemental state constitutional claim.

The plaintiff then filed his objections which concentrate on the substance of his ADA claim. First, the plaintiff contends that the magistrate judge erred in dismissing the ADA claim on the basis that he cannot assert a constitutional right to participation in

the boot camp program. Second, he objects that the magistrate judge erred in requiring a constitutional violation for a section 1983 claim because a violation of a federal statute, here the ADA, is all that is necessary.

In opposing the objections, the defendants argue for the first time that there is no ADA claim because the ADA does not apply to state prisons, relying on cases decided ~~after~~ the briefing of the motion to dismiss. They also contend that the section 1983 claim must fail because that claim requires either a federal constitutional or statutory violation and the plaintiff cannot establish either kind of violation here.

III. Discussion.

We will deal first with the defendants' threshold argument that the ADA does not apply to state prisons. The argument is based on Little v. Lycoming County, 912 F. Supp. 809 (M.D. Pa. 1996), a case decided by another judge of this court, and Torcasio v. Murray, 57 F.3d 1340 (4th Cir. 1995), cert. denied sub nom. Torcasio v. Angelone, ____ U.S. ____, 116 S.Ct. 772, 133 L.Ed.2d 724 (1996). We need only discuss Torcasio since Little simply adopts its reasoning.

It will be helpful to preface our discussion with the pertinent sections of Title II of the ADA. Section 12132 prohibits discrimination against the disabled and provides as follows:

Subject to the provisions of this subchapter [Title II], no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

42 U.S.C. § 12132 (brackets added).

Section 12131(1), the definitional section for Title II, defines a "public entity" as follows:

(A) any State or local government;

(B) any department, agency, special purpose district, or other instrumentality of a State or States or local government;

42 U.S.C. § 12131(1)(A) and (B)[.]

In Torcasio, the Fourth Circuit stated that section 12131(1) did not cover state prisons. It therefore held on the issue before it, whether Virginia prison officials were entitled to qualified immunity, that the plaintiff prisoner's claim under Title II of the ADA was barred by this defense. In the Fourth Circuit's perception, section 12131(1)'s language, "when viewed in isolation, appears all-encompassing," 57 F.3d at 1344, but was actually too "broad" and "non-specific" to be able to say that it was "clearly establishe[d]" that the ADA applied to state prisons. Id. at 1346 (brackets added). Hence, the defendants could not be subjected to liability since qualified immunity protected them against all claims based on a violation of a federal right except those rights that were clearly established. Id. at 1343.

Although decided in the context of qualified immunity, Torcasio is relevant here because the court essentially reasoned that the ADA does not apply to state prisons. See Little, *supra*, (applying Torcasio in dismissing an ADA claim on the merits); Staples v. Virginia Department of Corrections, 904 F. Supp. 487, 490 n.1 (Mag. Judge E.D. Va. 1995) (relying on Torcasio in dismissing the ADA claim against one defendant and commenting that "with its ruling . . . the Fourth Circuit has all but held that, *per se*, the ADA does not apply to state prison facilities").

Despite the plaintiff's citation to other cases that have applied the ADA to state prisons, we have decided to follow Torcasio and Little. Based on this decision, we need not examine the plaintiff's objections.

We will issue an appropriate order.

/s/ William W. Caldwell

William W. Caldwell

United States District Judge

Date: April 9, 1996

JA-100

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

RONALD R. YESKEY,

Plaintiff :

vs. :

COMMONWEALTH OF
PENNSYLVANIA, et al.,

Defendants :

CIVIL ACTION
NO. 1: CV-95-2125

ORDER

AND NOW, this 9th day of April, 1996, upon consideration of the report of the magistrate judge, dated January 23, 1996, and the objections filed, and upon independent review of the record, it is ordered that:

1. The defendants' motion to dismiss is granted.
2. The plaintiff's federal claims are dismissed and his state constitutional claim is dismissed without prejudice to its filing in an appropriate state court.
3. The Clerk of Court shall close this file.

/s/ William W. Caldwell

William W. Caldwell
United States District Judge

JA-101

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA
CIVIL DIVISION

RONALD R. YESKEY,

Plaintiff,

vs.

THE COMMONWEALTH OF
PENNSYLVANIA DEPARTMENT
OF CORRECTIONS,
JOSEPH D. LEHMAN,
JEFFREY A. BEARD, Ph.D.,
JEFFREY K. DITTY, DOES
NUMBER 1 THROUGH 20,
INCLUSIVE,

Defendants.

CIVIL ACTION NO.
1:95-CV-2125

NOTICE OF APPEAL

Notice is hereby given that Ronald R. Yeskey, Plaintiff in the above named case, hereby appeals to the United States Court of Appeals for the Third Circuit from an order granting defendants' motion to dismiss entered in this action on the 9th day of April, 1996.

Respectfully submitted,

DATED: 5/6/96

/s/ L. Abraham Smith

L. Abraham Smith, Esquire
Attorney for Plaintiff
Pa. I.D. #69020
P.O. Box 1644
Greensburg, PA 15601-7644
(412) 423-8614

JA-102

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA
CIVIL DIVISION

RONALD R. YESKEY,)	
Plaintiff,)	
)	
vs.)	
)	
THE COMMONWEALTH OF)	
PENNSYLVANIA DEPARTMENT)	
OF CORRECTIONS,	)	CIVIL ACTION NO.
JOSEPH D. LEHMAN,	)	1:95-CV-2125
JEFFREY A. BEARD, Ph.D.,)	
JEFFREY K. DITTY, DOES)	
NUMBER 1 THROUGH 20,)	
INCLUSIVE,)	
Defendants.)	

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing
Notice of Appeal was served upon the following as attorney for all
defendants via first-class mail, postage prepaid on May 6, 1996:

R. Douglas Sherman, Esquire
Office of the Attorney General
15th Flr., Strawberry Square
Harrisburg, PA 17120

/s/ L. Abraham Smith

L. Abraham Smith, Esquire
Attorney for Plaintiff
Pa. I.D. #69020
P.O. Box 1644
Greensburg, PA 15601-7644
(412) 423-8614

JA-103

IN THE
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 96-7292

RONALD R. YESKEY,

Appellant

v.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF CORRECTIONS; JOSEPH D. LEHMAN;
JEFFREY A. BEARD, PH.D.; JEFFREY K. DITTY;
DOES NUMBER 1 THROUGH 20, INCLUSIVE

BRIEF OF APPELLEES

Appeal of the Order entered April 9, 1996
in the United States District Court for
the Middle District of Pennsylvania
at Docket No. 1: CV-95-2125

THOMAS W. CORBETT, JR.
Attorney General

BY: **R. DOUGLAS SHERMAN**

Deputy Attorney General

CALVIN R. KOONS

Senior Deputy Attorney General

JOHN G. KNORR, III

Chief Deputy Attorney General

Office of Attorney General -
15th Floor, Strawberry Square
Harrisburg, PA 17120
(717) 783-1471

Date: **August 1, 1996**

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STATEMENT OF JURISDICTION

This is a civil action brought by a state prisoner pursuant to the Americans with Disabilities Act (ADA), 42 U.S.C. §12101, et seq. and 42 U.S.C. §1983 over which the district court had subject matter jurisdiction by virtue of 28 U.S.C. §§1331 and 1343.

This appeal is from a final order, over which this Court has jurisdiction by virtue of 28 U.S.C. § 1291. The district court's judgment was entered on April 9, 1996 and the notice of appeal was filed on May 7, 1996.

STATEMENT OF THE ISSUES PRESENTED

Whether the Americans with Disabilities Act is inapplicable to inmates incarcerated in a state prison?

This issue was raised before the district court during briefing on Yeskey's objections to the Report and Recommendation of the Magistrate Judge which recommended that the complaint be dismissed. The scope of review is plenary as to the district court's choice, interpretation and application of controlling legal precepts. *Silverman v. Eastrich Multiple Investor fund* [sic], 51 F.3d 28 (3d Cir. 1995); *Moore v. Tartler*, 986 F. 2d 682, 685 (3d Cir. 1993); *Turner v. Schering-Plough Corp.*, 901 F.2d 335, 340 (3d Cir. 1990).

STATEMENT OF THE CASE

This action alleged that state officials discriminated against an inmate by refusing to assign him to a particular state prison on account of his disability. The appellant, plaintiff in the district court, is Ronald R. Yeskey. Yeskey claimed that the Pennsylvania Department of Corrections did not place him in its motivational boot camp as the trial judge recommended, but declared him medically ineligible based upon his history of hypertension. Yeskey claimed the refusal to place him in the boot camp violated his rights under the Americans with Disabilities Act, 42 U.S.C. §12101, et seq. and violated his right to equal protection actionable pursuant to 42 U.S.C. §1983 and also violated rights under the Pennsylvania Constitution.

Appellees, defendants in the district court, are the Commonwealth of Pennsylvania, Department of Corrections; former Commissioner of Corrections Joseph Lehman; former Superintendent of the State Correctional Institution at Camp Hill Jeffrey A. Beard; and Director of the Central Diagnostic and Classification Center Jeffrey K. Ditty.¹

Yeskey filed this action in December 1994 in the Western District of Pennsylvania, from which it was transferred upon the defendants' motion to dismiss and transfer to the Middle District of Pennsylvania. The Magistrate Judge then issued a Report and Recommendation addressing the merits of the complaint, and recommended that the complaint be dismissed for failure to state a claim upon which relief could be granted on January 23, 1996.

Yeskey filed objections to the Report and Recommendation² to which the defendants responded. The District Court held that the ADA does not apply to state prisons. In reaching this conclusion, the court relied upon the reasoning of the Fourth Circuit Court of Appeals in *Torcasio v. Murray*, 57 F.3d 1340 (4th Cir. 1995), which held that Title II of the ADA was too broad and non-specific to enable the Court to conclude that Congress intended the statute to apply to prisons[.] See App. A-33 - A-35 (Memorandum at pp. 5-7).³

This appeal followed.

STATEMENT OF FACTS

In May 1994, Yeskey was sentenced in state court to a sentence of eighteen to thirty-six months incarceration. App. A-11 (Complaint, ¶9). The sentencing judge recommended that Yeskey be placed in the Department of Corrections' Motivational Boot Camp⁴. App. A-11 (Complaint, ¶10).

¹ Yeskey also named twenty "Does" as defendants. They were never served with process and are not parties to this appeal.

² The objections only addressed the propriety of dismissing the claim under the Americans with Disabilities Act claim [sic] and did not address the Magistrate Judge's recommended disposition of the other claims. Nor has Yeskey challenged those claims here on appeal.

³ Yeskey has attached his appendix to the Brief for Appellant.

⁴ The Motivational Boot Camp Act, 61 P.S. §1121 et seq. established a "motivational boot camp" to which certain inmates may be assigned to serve

In July 1994, while being housed in the State Correctional Institution at Camp Hill's Central Diagnostic and Classification Center, Yeskey was told that he was ineligible for participation in the Motivational Boot Camp program due to a medical history of hypertension. App. A-11 (Complaint, ¶11). The Correctional officials [sic] have not reconsidered their decision regarding Yeskey and have not established any alternative programs offering disabled persons like Yeskey the same benefits as the Motivational Boot Camp. App. A-11 (Complaint, ¶11).

STATEMENT OF RELATED CASES

This case has not previously been before the Court, and there are no pending or completed cases to which it is related.

SUMMARY OF ARGUMENT

Although the Americans with Disabilities Act (ADA) is a broad statute, it does not by its terms apply to prisons and decisions of daily prison administration--areas routinely recognized within the basic core functions of the State and areas in which the Courts have been loathe to intrude for reasons of federal/state comity as well as the recognition that courts are not the appropriate mechanism for administering prisons. As such, intrusions into prison administration should not be lightly entered absent express congressional authorization to do so. No such express authorization exists in the ADA.

Further, the stated purposes of the Act would not be served by applying it to prisons. The act focuses on the provision of public services by public entities to qualified individuals. The forced incarceration of convicted criminals in a very restricted and non-public place does not fit within the purpose or definition of the ADA. Instead, the ADA contemplates application to services and

their sentence by the Department of Corrections for a period of six months. The nature of the boot camp provides rigorous physical activity, intensive regimentation and discipline, work on public projects and other treatment. 61 P.S. §1123. Pursuant to statute, placement of inmates in the boot camp is discretionary with no inmate having a right to such placement. 61 P.S. §1126(d). Upon successful completion of the six month incarceration, the inmate is released on parole for intensive supervision as determined by the Pennsylvania Board of Probation and Parole. 61 P.S. §1127.

programs held open to the public as well as to the employment of free individuals in the public sector.

Given the absence of express statutory authority to apply the ADA to prisons and the lack of reliable evidence of Congress' intent that the ADA apply [sic] to prisons, the Court should hold that ADA [sic] does not apply to decisions of prison administration such as presented here.

ARGUMENT

THE AMERICANS WITH DISABILITIES ACT IS INAPPLICABLE TO INMATES INCARCERATED IN A STATE PRISON.

The district court, relying on the Fourth Circuit's decision in Torcasio v. Murray, 57 F.3d 1340 (4th Cir. 1995), cert. denied sub nom. Torcasio v. Angelone, ___ U.S. ___, 116 S.Ct. 772, 133 L.Ed.2d 724 (1996)⁵, held that the ADA does not apply to claims brought by a state prisoner based upon the prison's programs. App. A-34 - A-35. On appeal, Yeskey presents three arguments. First, that the district court should not have interpreted the ADA at all because it is unambiguous and should be afforded its plain meaning. See Appellant's Brief at pp. 13-16. Second, he claims that because the State's eleventh amendment immunity has been abrogated in suits brought under the ADA, it is improper to balance state and federal interests in interpreting the ADA. See Appellant's Brief at pp. 17-19. Finally, Yeskey argues that federal regulations and various publications related to the ADA supports a conclusion that the ADA applies to State prisons. See Appellant's Brief at pp. 20-23. All of Yeskey's arguments are without merit.

A. Congress did not intend the ADA to apply to prisons.

Through enactment of the ADA, Congress sought to eliminate discrimination against those with disabilities in three specific situations: in employment, (Title I, 42 U.S.C. §12111); in the

⁵ The Court in Torcasio arrived at this conclusion in the context of determining a defense of qualified immunity. Its decision with respect to the ADA is applicable here though.

provision of public services, (Title II, 42 U.S.C. §12131); and in the operation of places of public accommodation, (Title III, 42 U.S.C. §12181). Congress did not state in the Act that it was applicable to state prisons or the decisions of prison administrators.⁶ Instead, the Act is silent on this matter.

A number of courts have recently considered this issue, holding that the ADA does not apply to the incarceration of inmates. The common starting point of each of these cases is the recognition that if Congress seeks to alter the usual constitutional balance between the federal and state governments, it must make its intent to do so unmistakably clear. Torcasio v. Murray, 57 F.3d at 1344, citing Atascadero State Hospital v. Scanlon, 473 U.S. 234, 242 (1985); Pennhurst State School and Hospital v. Halderman, 465 U.S. 89, 99 (1984); and Rice v. Santa Fe Elevator Corp., 331 U.S. 218, 230 (1947). This requirement assures that the legislature has in fact considered and decided the critical issue of the balance of interests. Torcasio, 57 F.3d at 1344, citing United States v. [sic] Bass, 404 U.S. 336 (1971). A court should not override the federal-state balance absent a finding of clear congressional intent to do so. Torcasio, 57 F.3d at 1344-5, citing Gregory v. Ashcroft, 501 U.S. 452, 460 (1991).⁷

The text of Title II, "Public Services", of the ADA is admittedly broad, but nowhere in the language of the Act or its legislative history is there an express mention of state prisons:

Subject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

42 U.S.C. §12132.

⁶ Federal regulations do not provide any evidence of Congressional intent with respect to applying the ADA to prison management decisions. Although regulations implementing the ADA do mention "correctional institutions" in one brief place, at 28 C.F.R. §35.190 which designates the Department of Justice as the agency to implement the ADA relating to law enforcement, administration of justice, courts and correctional institutions, the regulation does not specify how the ADA is to be administered or the breadth of the ADA application in those areas.

⁷ The legislative history also does not express an intent to apply the ADA to state prisons.

The statute defines a "public entity" as "any State or local government" or "any department, agency, special purpose district, or other instrumentality of a State or States or local government, . . ." 42 U.S.C. §12131 (1) (A) (B). Further, a "qualified individual with a disability" is defined as "an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, . . . meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity." 42 U.S.C. §12131(2).

Broad language should not necessarily be construed to be all-encompassing where it undermines other legal precepts and upsets the normal balance of powers. See Atascadero State Hospital v. Scanlon, 473 U.S. 234, 245-6 (1985) (remedy provided in Rehabilitation Act against "any recipient of Federal assistance" does not mean a state even though states are recipients of federal assistance); Employees of Dept. of Pub. Health & Welfare v. Missouri Dept. of Public Health & Welfare, 411 U.S. 279, 283-5 (1973) (Fair Labor Standards Act language applying to "employees of a State" did not mean state employee could sue the state for violation). Rather, congressional intent must be interpreted in light of the contemporary legal context. Franklin v. Gwinnett County Public Schools, 503 U.S. 60, 71 (1992).

This is a case in which "there is no surer way to misread [a] document than to read it literally." Guisseppi v. Walling, 144 F. 2d 608, 624 (2d Cir. 1944). The inclusion of state prisons and their management into the coverage of the ADA would be at great odds with the universal recognition that the administration and management of State prisons is a basic state function entwined within the State's criminal justice system, Torcasio, 57 F.3d at 1345, citing Preiser v. Rodriguez, 411 U.S. 475, 491-92 (1973), and Procunier v. Martinez, 416 U.S. 396, 412 (1974); Little v. Lycoming County, 912 F.Supp. 809 (M.D. Pa. 1996), and one which the Supreme Court has routinely advised Courts to refrain from entering. See Torcasio, 57 F.3d at 1346 and cases cited therein.

B. Prisons are not "public entities" which provide "public services."

Besides the basic intrusion upon the State sovereign function of prison administration which application of the ADA would create, application as advanced by Yeskey runs counter to the purposes of Title II of the ADA, which Yeskey claims applies to this case. That Title clearly indicates Congress' intent that it apply to the provision of "public services" to "qualified individuals". The services provided by prisons are to the general public. It hardly can be said that involuntarily locking a criminal up in a prison of the State's choosing, compelling a prisoner to work or move at designated times, forcing confinement in sparsely furnished surroundings, or mandating specific treatment for inmates are public services to the prisoner. Such a construction of the ADA is absurd.

Prison administrators are responsible for internal order, discipline, and security of those put in their custody. Prisons generally do not provide "services," "programs," or "activities" as those terms are ordinarily understood. Torcasio, 57 F.3d at 1345, citing Procunier v. Martinez, *supra*, 416 U.S. at 404; Little v. Lycoming County, *supra*. Prisons are not places in which the public may normally access nor in which the public may apply for or take advantage of services, and should therefore not be considered public entities.⁸ Prisons are restrictive, non-public places where convicted criminals are sent--not by choice or by volunteering, but by uninvited order of a court.⁹

C. Inmates are not "qualified" individuals.

Additionally, an inmate with a disability does not readily meet the definition of a "qualified individual" under the Act. A

⁸ Appellees do not argue that all aspects of a correctional facility are immune from application of the ADA. Certainly, the ADA would be applicable to employment of staff and access to buildings open to the public such as general administration areas or visiting areas. Rather, appellees contest only application of the ADA to the management of prisons in terms of routine daily decisions of inmate custody and control, programming, security, order and discipline.

⁹ The Motivational Boot Camp is no different. The Boot Camp is simply an alternative form of prison designed by the Legislature for certain classes of criminals. See 61 P.S. §§1122-1126.

prisoner does not normally have "occasion to 'meet [] the essential eligibility requirements' for receipt of or participation in the services, programs, or activities of a public entity. The terms 'eligible' and 'participate' imply voluntariness on the part of the applicant who seeks a benefit from the State; they do not bring to mind prisoners who are being held against their will." Torcasio, 57 F.3d at 1347; Bryant v. Madigan, 84 F.3d 246, 248-9 (7th Cir. 1996) (questioning whether Congress could have actually intended disabled prisoners to be mainstreamed into the highly restricted environment of prison); and Gorman v. Barch, 925 F.Supp. 653, 655-6 (M.D. Mo. 1996).

There are no aspects of the ADA which lend it to ready application to prison management decisions. This is equally true whether the decision is one concerning inmate employment, Pierce v. King, 918 F.Supp. 932 (E.D. N.C. 1996); an inmate's cell dimensions, Torcasio, *supra*; or the placement of an inmate in a particular prison deemed appropriate by prison administrators following classification processes as found here.¹⁰

In an analogous context, courts have refused to infer from language as broad as that in the ADA, congressional intent that the Fair Labor Standards Act (FLSA), 29 U.S.C. §201 *et seq.* apply to inmate employees. The FLSA, like the ADA, contains broad, sweeping language and imposes minimum wage requirements while defining employees as "any individual employed by an employer", 29 U.S.C. §203 (e) (1) and employers as "any person acting . . . in the interest of an employer in relation to an employee and includes a public agency". 29 U.S.C. §203 (d). "Employ" is defined as "to suffer or permit to work". 29 U.S.C.

¹⁰ At least one Court, in Gates v. Rowland, 39 F.3d 1439 (9th Cir. 1994), has held that "the Act's statutory rights in a prison setting [is] equivalent to [the standard for] the review of constitutional rights in a prison setting." 39 F.3d at 1447. The refusal to place Yeskey in a particular prison setting which he desires does not implicate any constitutional right. Olim v. Wakinekona, 461 U.S. 238, 245 (1982); Moody v. Daggett, 429 U.S. [sic] 78, 88 (1976); Meachum v. Fano, 427 U.S. 215, 224-5 (1976). Neither Yeskey, nor any other prisoner, should enjoy any greater right to placement in a prison of his choice than he would have if he were not disabled. Yet application of the ADA would provide disabled prisoners a greater right than they could ever possess were they not disabled and thereby would severely intrude upon ordinary decisions of prison management.

§203(g). Further, although the FLSA excludes certain categories of persons from application, it does not specifically mention prisoners. See [sic] 29 U.S.C. §213(a).

In each case involving claims that prisoners employed by a prison receive minimum wage, the courts have acknowledged the great intrusion upon a State sovereign function which application of the FLSA to prison labor would create and refused to intrude absent express congressional direction to do so. See Harker v. State Use Industries, 990 F. 2d 131 (4th Cir.), cert. denied ____ U.S. ____, 114 S. Ct. 238 (1993); Gilbreath v. Cutter Biological Inc., 931 F. 2d 1320, 1325 (9th Cir. 1991); Vanskike v. Peters, 974 F.2d 806, 808 (7th Cir. 1992); and Miller v. Dukakis, 961 F.2d 7, 8 (1st Cir. 1992). Indeed, a congressional act should not be construed in a way which would result in absurdity and impute an intent not expressly intended.

The result should be the same here. The plain meaning of a statute should not be automatically followed where it "will produce a result demonstrably at odds with the intention of the drafters." United States v. Ron Pair Enterprises, 489 U.S. 235, 242 (1989). A thing may be within the letter of the statute and yet not within its spirit nor within the intention of its makers. United Steelworkers of America, AFL-CIO v. Weber, 443 U.S. 193, 201 (1979).

Application of the ADA to internal prison management would place nearly every aspect of prison management into the court's hands for scrutiny simply because an inmate has a disability. See Pierce v. King, 918 F.Supp. 932, 941 (E.D. N.C. 1996). For instance, if the ADA applies to routine prison decisions, it is not unfathomable that courts will be used to reconstruct cells and prison space, to alter scheduling of inmate movements and assignments and to interfere with security procedures. These are affects [sic] which certainly should not be ascribed to Congressional intent without Congress expressly saying so. As the Court in Gates v. Rowland, 39 F.3d 1439 (9th Cir. 1994), stated, "[t]he Act was not designed to deal specifically with the prison environment; it was intended for general societal application. There is no indication that Congress intended the Act to apply to prison facilities irrespective of the reasonable requirements of effective prison administration." Id. at 1446-7.

Yeskey does not cite to a single case holding that the ADA does apply in these circumstances.¹¹ Instead, Yeskey argues that Torcasio's analysis of balancing federal and state interests when construing and applying the statute is erroneous. Yeskey claims that because Torcasio is premised upon a number of cases involving the Eleventh Amendment immunity of the States, and because the ADA has abrogated the Eleventh Amendment, the concerns of State interests and comity are no longer important. See Brief for Appellant, pp. 17-19. Yeskey cites no authority for this proposition. Nor are appellees aware of any. That immunity may have been abrogated for the States under the ADA does not defeat or limit the analysis of the State's substantial interest in prison administration nor the discussion of whether prisons are public entities providing public services or whether inmates are qualified individuals. Congress' intent to abrogate the State's immunity for claims involving public services by public entities to qualified individuals does not provide reason to believe Congress also intended to trample the long-established rights of States in areas not specified, nor in traditional non-public areas simply because the State may have some involvement with it.

Finally, Yeskey cites to publications of the National Institute of Justice which he claims outline the "obligation of state correctional agencies to assist disabled inmates" and claim that these publications evince pronouncements of the Department of Justice. See Brief for Appellant, pp. 20-23. Yeskey has attempted to provide this Court with a copy of one of these publications under cover letter dated July 15, 1993.¹² This Court returned the document to Yeskey as an improper submission under Rule 28(j). Appellees address the publications below in the event Yeskey may

¹¹ Although there are several cases holding application of the ADA appropriate, none is binding precedent on this Court and, as noted in Torcasio, supra, and Little v. Lycoming County, 912 F.Supp. 809 (M.D. Pa. 1996), they either do not squarely address the issue or give it a superficial analysis which is not persuasive in light of the concerns expressed above.

¹² The submission of the document or reliance on it is improper since it is not a statute or regulation, was not part of the record submitted before the district court, and is not a supplemental authority as contemplated in Appellate Rule 28(j).

seek leave to file an addendum to submit the documents as referenced in the Court's July 18, 1996 letter to Yeskey's counsel.

The publications referenced are not regulations and are not entitled to any deference as Yeskey contends. In fact, the only such publication submitted to the Court (under the separate cover letter dated July 15, 1996), specifically provides that the "points of view in this document are those of the authors and do not necessarily represent the official position of the U. S. Department of Justice." See page 7 of July 15, 1996 submission. Thus, Yeskey has misrepresented the nature of the documents and has provided no authoritative reason upon which to believe that Congress intended the ADA to apply to the management of prisons and the prisoners incarcerated there.

CONCLUSION

For the foregoing reasons, the judgment of the district court should be affirmed.

Respectfully submitted,

THOMAS W. CORBETT, JR.
Attorney General

BY: /s/ R. Douglas Sherman

R. DOUGLAS SHERMAN
Deputy Attorney General

CALVIN R. KOONS
Senior Deputy Attorney General

JOHN G. KNORR, III
Chief Deputy Attorney General

Office of Attorney General
15th Fl., Strawberry Square
Harrisburg, PA 17120
(717) 783-1471

DATE: AUGUST 1, 1996

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CERTIFICATE OF BAR MEMBERSHIP

I, **R. DOUGLAS SHERMAN**, hereby certify that I am a member in good standing of the Bar of this court[.]

/s/ R. Douglas Sherman

R. DOUGLAS SHERMAN

Deputy Attorney General

JA-121

CERTIFICATE OF SERVICE

I, **R. DOUGLAS SHERMAN**, Deputy Attorney General for the Commonwealth of Pennsylvania, Office of Attorney General, hereby certify that on **August 1, 1996**, I cause [sic] to be served two true and correct copies of the foregoing document entitled **Brief of Appellees** by depositing two copies in the united [sic] States Mail, first-class, postage prepaid to the following:

L. Abraham Smith, Esq.

P. O. Box 1644

Greensburg, PA 15601-7644

/s/ R. Douglas Sherman

R. DOUGLAS SHERMAN

Deputy Attorney General

DATED: **AUGUST 1, 1996**

JA-122

Filed July 10, 1997

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 96-7292

RONALD R. YESKEY,
APPELLANT

v.

COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF
CORRECTIONS; JOSEPH D. LEHMAN; JEFFREY A.
BEARD, PH.D.; JEFFREY K. DITTY; DOES NUMBER 1
THROUGH 20, INCLUSIVE,

APPELLEES

On Appeal From the United States District Court
For the Middle District of Pennsylvania
(D.C. Civ. No. 95-cv-02125)

Argued: January 31, 1997

Before: BECKER, ROTH, *Circuit Judges*, and
BARRY, *District Judge*.*

(Filed July 10, 1997)

L. ABRAHAM SMITH, ESQUIRE
(ARGUED)
P.O. Box 1644
Greensburg, PA 15601

Attorney for Appellant

*Honorable Maryanne Trump Barry, United States District Judge for
the District of New Jersey, sitting by designation.

JA-123

THOMAS W. CORBETT, JR.
Attorney General
R. DOUGLAS SHERMAN (ARGUED)
Deputy Attorney General
CALVIN R. KOONS
Senior Deputy Attorney General
JOHN G. KNORR, III
Chief Deputy Attorney General

Office of Attorney General
15th Floor, Strawberry Square
Harrisburg, PA 17120

Attorneys for Appellees

OPINION OF THE COURT

BECKER, *Circuit Judge*.

Ronald R. Yeskey is a Pennsylvania prison inmate who was denied admission to the Pennsylvania Department of Correction's Motivational Boot Camp program because of a history of hypertension, despite the recommendation of the sentencing judge that he be placed therein.¹ Yeskey brought suit in the district court under the Americans With Disabilities Act (ADA), 42 U.S.C. § 12101 *et seq.*, alleging that his exclusion from the program violated that enactment.²

The district court dismissed Yeskey's complaint, Fed. R.

1. The Motivational Boot Camp Act, 61 P.S. § 1121 *et seq.*, established a "motivational boot camp" to which certain inmates may be assigned by the Department of Corrections to serve their sentences for a period of six months. The boot camp provides rigorous physical activity, intensive regimentation and discipline, work on public projects, and other treatment. *Id.* § 1123. Pursuant to statute, placement of inmates in the boot camp is discretionary, and, as such, no inmate has a right to such placement. *Id.* § 1126(d). Upon successful completion of the six months incarceration, the inmate is released on parole for intensive supervision as determined by the Pennsylvania Board of Probation and Parole. *Id.* § 1127.

2. Yeskey also asserted claims under 42 U.S.C. § 1983 and state law.

Civ. P. 12(b)(6), holding that the ADA is inapplicable to state prisons. The question of the applicability of the ADA to prisons is an important one, especially in view of the increased number of inmates, including many older, hearing-impaired, and HIV-positive inmates, in the nation's jails. See generally Ira P. Robbins, *George Bush's America Meets Dante's Inferno: The Americans with Disabilities Act in Prison*, 15 Yale L. & Pol'y Rev. 49, 56-63 (1996). For the reasons that follow, we reverse.³

I.

Because this appeal turns on statutory construction, we begin with the text of the relevant statute, or more precisely, statutes. Although Yeskey only invoked the ADA, our discussion necessarily involves Section 504 of the Rehabilitation Act, 29 U.S.C. § 794(a). Section 504, the first federal statute to provide broad prohibitions against discrimination on the basis of disability, applies only to programs and activities receiving federal financial assistance. Title II of the ADA, the broader statute, enacted in 1990, extends these protections and prohibitions to all state and local government programs and activities, regardless of whether they receive federal financial assistance. Congress has directed that Title II of the ADA be interpreted in a manner consistent with Section 504, 42 U.S.C. § 12134(b), 12201(a),⁴ and all the leading cases take up the statutes together, as will we.

The substantive provisions of the statutes are similar. Section 504 provides in pertinent part:

3. By the time this case was listed for submission in this Court, only a short time remained on Yeskey's sentence, and we have unfortunately been unable to dispose of it until now. He may have been released (the parties have not informed us on this point). However, Yeskey's complaint included a claim for damages, and hence the case is not moot. We also note that, since boot camp placement commences contemporaneous with the execution of sentence, it would probably be nigh impossible to test improper exclusion from the boot camp program in federal court before the six month placement expires, likely creating a situation capable of repetition yet evading review, which excuses mootness.

4. See generally Robbins, *supra*, at 73-76.

No otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency[.]

29 U.S.C. § 794(a).

Title II of the ADA provides in pertinent part:

no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the Services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

42 U.S.C. § 12132.

The statutory definition of "[p]rogram or activity" in Section 504 indicates that the terms were intended to be all-encompassing. They include "all of the operations of — (1)(A) a department, agency, special purpose district, or other instrumentality of a State or of a local government . . . any part of which is extended Federal financial assistance." 29 U.S.C. § 794(b) (emphasis added). It is hard to imagine how state correctional programs would not fall within this broad definition.

Moreover, a word in a statute "must be given its 'ordinary or natural' meaning," see *Bailey v. United States*, 116 S. Ct. 501, 506 (1995), and the ordinary meanings of "activity" and "program" clearly encompass those that take place in prisons. "Activity" means, *inter alia*, "natural or normal function or operation," and includes the "duties or function" of "an organizational unit for performing a specific function." *Webster's Third New International Dictionary* 22 (1986). "Program" is defined as "a plan of procedure; a schedule or system under which action may be taken toward a desired goal." *Id.* at 1812. Certainly, operating a prison facility falls within the "duties or functions" of local government authorities. Moreover, Title II's definition of a "public entity" clearly encompasses a state or local correctional facility or authority: "any department, agency,

... or other instrumentality of a State or States or local government[.]” 42 U.S.C. § 12131(1)(B) (emphasis added).

This conclusion is bolstered by the Department of Justice (DOJ) regulations implementing both Section 504 and Title II of the ADA. These regulations were expressly authorized by Congress, 29 U.S.C. § 794(a); 42 U.S.C. §§ 12134(a), 12206, and, in view of Congress’ delegation, the DOJ’s regulations should be accorded “controlling weight unless [they are] ‘arbitrary, capricious, or manifestly contrary to the statute.’” *Babbitt v. Sweet Home Chapter of Communities for a Great Oregon*, 115 S. Ct. 2407, 2418 (1995). The same is true of the preamble or commentary accompanying the regulations since both are part of the DOJ’s official interpretation of the legislation. *Thomas Jefferson Univ. v. Shalala*, 114 S. Ct. 2381, 2386 (1994). DOJ interprets both Section 504 and Title II of the ADA to apply to correctional facilities.

The regulations promulgated by DOJ to enforce Section 504 define the kinds of programs and benefits that should be afforded to individuals with disabilities on a nondiscriminatory basis. The regulations define “program” to mean “the operations of the agency or organizational unit of government receiving or substantially benefiting from the Federal assistance awarded, e.g., a police department or department of corrections.” 28 C.F.R. § 42.540(h) (1996) (emphasis added). The term “[b]enefit” includes “provision of services, financial aid or disposition (i.e., treatment, handling, decision, sentencing, confinement, or other prescription of conduct).” *Id.* § 42.540(j) (emphasis added). The appendix to the regulations, attached to the Final Rule (45 Fed. Reg. 37620, 37630 (1980)), makes clear that services and programs provided by detention and correctional agencies and facilities are covered by Section 504. This coverage is broad, and includes “jails, prisons, reformatories and training schools, work camps, reception and diagnostic centers, pre-release and work release facilities, and community-based facilities.” *Id.*

The appendix further provides that those facilities designated for use by persons with disabilities are “required to make structural modifications to accommodate detainees or prisoners in wheelchairs.” *Id.* The DOJ regulations

applicable to federally conducted programs also make it clear that institutions administered by the Federal Bureau of Prisons are subject to Section 504. See 28 C.F.R. § 39.170(d)(1)(II) (Section 504 complaint procedure for inmates of federal penal institutions); *id.* pt. 39, Editorial Note, at 675 (Section 504 regulations requiring nondiscrimination in programs or activities of the Department of Justice apply to the Federal Bureau of Prisons); *id.* at 676 (federally conducted program is “anything a Federal agency does”).

The regulations promulgated under Title II of the ADA afford similar protections to persons with disabilities who are incarcerated in prisons, or otherwise institutionalized by the state or its instrumentalities, regardless of the public institution’s receipt of federal financial assistance. The regulations state that the statute’s coverage extends to “all services, programs, and activities provided or made available by public entities.” *Id.* § 35.102(a). This broad language is intended to “apply[] to anything a public entity does.” *Id.* pt. 35, app. A, subpt. A at 456. As part of its regulatory obligations under Title II, the DOJ is designated as the agency responsible for coordinating the compliance activities of public entities that administer “[a]ll programs, services, and regulatory activities relating to law enforcement, public safety, and the administration of justice, including courts and correctional institutions.” *Id.* § 35.190(b)(6). The preamble to the ADA regulations also refers explicitly to prisons, stating that, where an individual with disabilities “is an inmate of a custodial or correctional institution,” the entity is required to provide “assistance in toileting, eating, or dressing to [that] individual[.]” *Id.* pt. 35, app. A at 468.⁵

5. Moreover, the DOJ Title II Technical Assistance Manual specifically lists “jails and prisons” as types of facilities that, if constructed or altered after the effective date of the ADA (January 26, 1992), must be designed and constructed so that they are readily accessible to and usable by individuals with disabilities. *Title II Technical Assistance Manual* II-6.0000, II-6.3300(6). The design standards applicable to facilities covered by Section 504 and Title II also include specific provisions relating to correctional facilities. The DOJ Section 504 regulations adopt the Uniform Federal Accessibility Standards (UFAS).

In sum, Section 504 of the Rehabilitation Act, Title II of the ADA, and the specific provisions in the DOJ's regulations listing correctional facilities or departments as covered entities confirm that the Rehabilitation Act and the ADA apply to state and locally-operated correctional facilities.

II.

The weight of judicial authority also supports our conclusion that the ADA applies to prison programs. In *Crawford v. Indiana Department of Corrections*, ___ F.3d ___, 1997 WL 289101 (7th Cir. June 2, 1997), the Seventh Circuit held that Title II of the ADA applied to state prisons in the case of a blind, former state prisoner who sought damages resulting from his exclusion from a variety of programs, activities, and facilities at the prison that were routinely available to the prison's population, including educational programs, the library, and the dining hall. *Accord Duffy v. Riveland*, 98 F.3d 447, 455 (9th Cir. 1996); *Harris v. Thigpen*, 941 F.2d 1495, 1522 n.41 (11th Cir. 1991) (holding Rehabilitation Act applicable).

Two circuits have questioned the applicability of Section 704 and Title II to prisons. See *Torcasio v. Murray*, 57 F.3d 1340, 1344-46 (4th Cir. 1995) (coverage of prisons by Section 504 and Title II not clearly established in qualified immunity context), *cert. denied*, 116 S. Ct. 772 (1996);

which apply to federal agencies and entities receiving federal financial assistance. 28 C.F.R. §42.522(b). UFAS lists "jails, prisons, reformatories" and "[o]ther detention or correctional facilities" as institutions to which the accessibility standards apply. 41 C.F.R. subpt. 101-19.6, app. A at 150. Under Title II, covered entities building new or altering existing facilities may follow either UFAS or the ADA Accessibility Guidelines for Buildings and Facilities (ADAAG). 28 C.F.R. §35.151(c); see *id.* pt. 36, app. A. Amendments to the ADAAG, adopted as an Interim Final Rule, effective December 20, 1994, by the Architectural & Transportation Barriers Compliance Board, include specific accessibility guidelines for "detention and correctional facilities." 59 Fed. Reg. 31676, 31770-72 (1994). The Department of Justice has proposed adoption of the interim final rule. *Id.* at 31808. The ADAAG is not effective until adopted by the DOJ.

White v. State of Colorado, 82 F.3d 364, 367 (10th Cir. 1996) (neither ADA nor Rehabilitation Act applies to prison employment). In our view, these opinions are seriously flawed. The leading case in support of the Commonwealth's position is *Torcasio*, which was followed by the district court here, and so we focus our sights on that case.⁶

The Fourth Circuit in *Torcasio* acknowledged that the broad language prohibiting discrimination on the basis of disability in both statutes "appears all-encompassing," 57 F.3d at 1344. Nevertheless, the *Torcasio* court was reluctant to find either statute applicable to prisons because of the so-called "clear statement" doctrine, as set out in *Will v. Michigan Department of State Police*, 491 U.S. 58, 65 (1989):

if Congress intends to alter the "usual constitutional balance between the States and the Federal Government," it must make its intention to do so "unmistakably clear in the language of the statute." *Atascadero State Hospital v. Scanlon*, 473 U.S. 234, 242 . . . (1985); see also, *Pennhurst State School and Hospital v. Halderman*, 465 U.S. 89, 99 . . . (1984).

Because it found the operation of prisons to be a "core state function," 57 F.3d at 1345, and because neither Section 504 nor Title II includes an express statement of its application to correctional facilities, the *Torcasio* court expressed its doubt that Congress had "clearly" intended either statute to apply to state prisons. *Id.* at 1346.

This extension of the clear statement rule was unwarranted. *Will*, *Atascadero*, and *Pennhurst* all involved instances in which there had been no express waiver or abrogation of the state's traditional immunity from suit, either by the state itself (*Pennhurst*), or by Congress (*Will*, *Atascadero*). Here, in contrast, both Section 504 and Title

6. *Torcasio* did not decide whether either Section 504 or Title II of the ADA applies to prisons; rather, it concluded that such coverage was not clearly established at the time of the events at issue, and that the individual defendants in that case therefore were entitled to qualified immunity. In reaching its qualified immunity ruling, however, the *Torcasio* court discussed the reach of the two statutes at length, and expressed its doubt that either applied to prisons.

II of the ADA contain an "unequivocal expression of congressional intent to overturn the constitutionally guaranteed immunity of the several states." *Pennhurst*, 465 U.S. at 99 (internal quotation marks and citation omitted); see 42 U.S.C. § 2000d-7(a)(1) ("A State shall not be immune under the Eleventh Amendment . . . from suit in Federal court for a violation of section 504 of the Rehabilitation Act."); *id.* § 12202 ("A State shall not be immune under the eleventh amendment . . . from an action in Federal or State court of competent jurisdiction for a violation of [the ADA].").

To be sure, when "Congress intends to alter the usual constitutional balance between the States and the Federal Government, it must make its intention to do so unmistakably clear in the language of the statute." *Gregory v. Ashcroft*, 501 U.S. 452, 460, 461 (1991) (internal quotation marks and citations omitted). This requirement, however, is a "rule of statutory construction to be applied where statutory intent is ambiguous." *Id.* at 470. It is not a warrant to disregard clearly expressed congressional intent.

Torcasio's statement that Congress must specifically identify state or local prisons in the statutory text, if it wishes to regulate them, was expressly disavowed by the Supreme Court in *Gregory*. See *id.* at 467 ("This does not mean that the Act must mention judges explicitly."). Congress need only make the scope of a statute "plain." *Id.* And Congress has done that here. Both Section 504 and Title II speak unambiguously of their application to state and local governments and to "any" or "all" of their operations. In light of the clear and all-encompassing language of both statutes, there is no basis for requiring Congress to have detailed which of the many important components of state and local governments were to be included in the terms "any" and "all."

In *Crawford, supra*, just as in this case, the state relied on the fact that prison administration was a "core" state function in arguing that the clear statement rule was triggered. Judge Posner responded most forcefully:

Prison administration is indeed a core function of state government, as is education. But the state's concession

that the Americans with Disabilities Act applies to the prison's relations with its employees and visitors, as well as to the public schools, suggests that the clear-statement rule does not carry this particular core function of state government outside the scope of the Act. We doubt, moreover, that Congress could speak much more clearly than it did when it made the Act expressly applicable to all public entities and defined the term "public entity" to include every possible agency of state or local government. Maybe there is an inner core of sovereign functions, such as the balance of power between governor and state legislature, that if somehow imperiled by the ADA would be protected by the clear-statement rule, *cf. Gregory v. Ashcroft, supra*, 501 U.S. at 461-63; but the mere provision of public services, such as schools and prisons, is not within that inner core.

Crawford, __ F.3d __, 1997 WL 289101, at *4. We agree.

III.

Despite the Commonwealth's contention to the contrary, moreover, *prisoners* (in contrast to *prisons*) are not excluded from coverage because Section 504 and Title II protect only "qualified individual[s] with a disability." That term is defined in Title II to mean:

an individual with a disability who, with or without reasonable modifications . . . meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.

42 U.S.C. § 12131(2). The terms "eligibility" and "participation" do not, as *Torcasio* stated, see 57 F.3d at 1347, "imply voluntariness" or mandate that an individual seek out or request a service to be covered. To the contrary, the term "eligibility" simply describes those who are "fitted or qualified to be chosen," without regard to their own wishes. See *Webster's Third New International Dictionary, supra* at 736.

Judge Posner addressed a related aspect of the case quite incisively:

It might seem absurd to apply the Americans with Disabilities Act to prisoners. Prisoners are not a favored group in society; the propensity of some of them to sue at the drop of a hat is well known; prison systems are strapped for funds; the practical effect of granting disabled prisoners rights of access that might require costly modifications of prison facilities might be the curtailment of educational, recreational, and rehabilitative programs for prisoners, in which event everyone might be worse off. But . . . there is another side to the issue. The Americans with Disabilities Act was cast in terms not of subsidizing an interest group but of eliminating a form of discrimination that Congress considered unfair and even odious. The Act assimilates the disabled to groups that by reason of sex, age, race, religion, nationality, or ethnic origin are believed to be victims of discrimination. Rights against discrimination are among the few rights that prisoners do not park at the prison gates. Although the special conditions of the prison setting license a degree of discrimination that would not be tolerated in a free environment, there is no general right of prison officials to discriminate against prisoners on grounds of race, sex, religion, and so forth. If a prison may not exclude blacks from the prison dining hall and force them to eat in their cells, and if Congress thinks that discriminating against a blind person is like discriminating against a black person, it is not obvious that the prison may exclude the blind person from the dining hall, unless allowing him to use the dining hall would place an undue burden on prison management.

Crawford, __ F.3d __, 1997 WL 289101, at *5 (citations omitted). We agree here as well.

In sum, in enacting the ADA, Congress "invoke[d] the sweep of [its] authority, including the power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities." 42 U.S.C. § 12101(b)(4). The "critical areas" in which "discrimination against individuals with disabilities persists" were set forth in the statute, and include "institutionalization." *Id.* § 12101(a)(3).

Thus, if the plain words of a statute are to guide the courts in interpreting it, then both statutes must be held to apply to state and local correctional facilities.⁷ Essentially, the Commonwealth is asking us to amend the statute, something we cannot do.

IV.

The foregoing discussion establishes that the ADA applies to Yeskey's claim. His claim for injunctive relief is, apparently, moot in view of the impending (or actual) completion of his prison term. His claim for damages will turn, presumably, on whether he should (or would) have been admitted to the boot camp. Even with the ADA applicable, Yeskey might not have been admitted for a number of reasons, which will have to be explored on remand.

The Commonwealth has invoked the specter of federal court management of state prisons:

Application of the ADA to internal prison management would place nearly every aspect of prison management into the court's hands for scrutiny simply because an inmate has a disability. See *Pierce v. King*, 918 F. Supp. 932, 941 (E.D.N.C. 1996). For instance, if the ADA applies to routine prison decisions, it is not unfathomable that courts will be used to reconstruct cells and prison space, to alter scheduling of inmate movements and assignments and to interfere with security procedures.

Brief at 15. Although these considerations do not override our conclusion that the ADA applies to prisons, our holding does not dispose of the controversial and difficult question whether principles of deference to the decisions of prison officials in the context of constitutional law apply to

7. We add that the legislative history does not inveigh against this conclusion. When the ADA was enacted in 1990, the Rehabilitation Act had been law for seventeen years and a number of cases had held it applicable to prisons and prisoners, yet Congress did not amend that Act or alter any language so as to extirpate those interpretations.

statutory rights. See generally *Robbins, supra*, at 94-97.⁸ We are not sure of the answer, and need not address that question now for, at all events, we doubt that it will be germane in this case. We do, however, "flag" it for another day.

The judgment of the district court will be reversed, and the case remanded for further proceedings consistent with this opinion.

A True Copy:
Teste:

*Clerk of the United States Court of Appeals
for the Third Circuit*

8. *Turner v. Safley*, 482 U.S. 78 (1987), establishes a four-part "reasonableness" test for judicial deference to prison management decisions in the face of constitutional challenges (usually under the Eighth Amendment). The first requirement is "a valid rational connection" between the regulation and the alleged governmental interest. The second inquiry is whether alternative means exist for inmates to exercise the right under consideration. The third issue is the effect that accommodation of the asserted right will have on security, administrative efficiency, prison staff, and the larger inmate population. The final prong of the test is whether an alternative means exists for prison officials to accomplish their objectives without infringing on inmates' rights. See also *O'Lone v. Estate of Shabazz*, 482 U.S. 342 (1987) (reaffirmed the *Turner* standard with respect to alleged infringement of inmates' First Amendment right to free exercise of religion).

The Ninth Circuit has held that the *Turner* standard applies to statutory rights such as those created by the ADA. In *Gates v. Rowland*, 39 F.3d 1439 (9th Cir. 1994), the court reversed a lower court's ruling that denial of food-service positions to HIV-positive inmates discriminated against them impermissibly. Reasoning that, where constitutional protections bend, statutory privileges must too, the court deferred to the penological concerns asserted by prison officials. The Eighth Circuit disagrees. See *Pargo v. Elliott*, 49 F.3d 1355 (8th Cir. 1995) (*Turner* does not foreclose all heightened judicial review.)

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 96-7292

RONALD R. YESKEY,

APPELLANT

v.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF CORRECTIONS;
JOSEPH D. LEHMAN; JEFFREY A. BEARD, PH.D.;
JEFFREY K. DITTY; DOES NUMBER 1
THROUGH 20, INCLUSIVE,

On Appeal From the United States District Court
For the Middle District of Pennsylvania
(D.C. Civ. No. 95-cv-02125)

Present: Becker, Roth, Circuit Judges, and Barry, District Judge*

JUDGMENT

This cause came on to be heard on the record from the United States District Court for the Middle District of Pennsylvania and was argued by counsel January 31, 1997.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court entered April 10, 1996, be, and the same is hereby reversed and the cause remanded to the said District Court for further proceedings consistent with the opinion of this Court. Costs taxed against the appellees. All of the above in accordance with the opinion of this Court.

ATTEST:

Chief Deputy Clerk

Dated: July 10, 1997

*Honorable Maryanne Trump Barry, United States District Judge for the District of New Jersey, sitting by designation.

No. 96-7292

Page 2

Costs Taxed In Favor of Appellant as follows:

Total for Brief	\$80.40
Total for Appendix	\$ 5.50
Total	\$85.90

Certified as a true copy and issued in lieu
of a formal mandate on August 1, 1997

Teste: _____

Chief Deputy Clerk, United States Court of Appeals for the
Third Circuit.

THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

RONALD R. YESKEY,	:	
Plaintiff	:	
	:	Civil Action No.
v.	:	1:CV-95-2125
COMMONWEALTH OF PENNSYLVANIA	:	
DEPARTMENT OF CORRECTIONS,	:	(Judge Caldwell)
et al.,	:	
Defendants	:	

DEFENDANTS' MOTION TO STAY PROCEEDINGS

Defendants, by and through their attorneys, Sarah B. Vandenbraak, Chief Counsel, and Raymond W. Dorian, Assistant Counsel, respectfully request this Court to issue a stay of proceedings pending review of Defendants' application for Writ of Certiorari from the United States Supreme Court, pursuant to F.R.Civ. P. 62 (c) and F.R. App. 8 (a) and in support thereof, respectfully make the following arguments:

1. On December 21, 1994, Plaintiff filed suit against Defendants for alleged civil rights violations arising out of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. § 12101, and his federal right to equal protection.

2. Plaintiff's complaint alleged that he had been denied access to, "programs, opportunities and benefits offered by the Defendants on the basis that he is a qualified person with a disability." (See Plaintiff's Complaint p. 2).

3. On April 9, 1996, this Court granted Defendant's [sic] Motion to Dismiss, on the ground that the Plaintiff failed to state a claim upon which relief may be granted, under F. R. Civ. P. 12(b)(6). In reaching this conclusion, the Court relied upon the reasoning of the Fourth Circuit Court of Appeals in Torcasio v. Murray, 57 F.3d 1340 (4th Cir. 1995), cert. denied sub nom. Torcasio v. Angelone, ____ U.S. ____, 116 S. Ct. 771(1996), which held that Title II of the ADA was too broad and non-specific to enable the court to conclude that Congress intended the statute to apply to prisons.

4. On July 10, 1997, a three judge panel of the United States Court of Appeals for the Third Circuit reversed the order of this Court, and remanded the case back for further proceedings. While declining to discuss the merits of Plaintiff's complaint, the Court of Appeals held that the daily administrative realm of state correctional facilities was encompassed within the scope of the ADA.

5. Defendants' Answer is due when this case proceeds. Defendants intend to raise the issues of the ADA's applicability to state prisons and whether Congress has the power pursuant to the Fourteenth Amendment to legislate the imposition of the ADA requirements on state government. In addition, Defendants intend to raise the related question of Eleventh Amendment immunity.

6. To date, there is a split among the various federal circuit courts of appeals as to whether the United States Congress intended state prison inmates to use the ADA as a vehicle to redress civil rights grievances. The Court of Appeals for the Third Circuit has joined the Seventh and Ninth federal circuit courts in their decision [sic] to recognize state prison inmate claims under Title II of the ADA. The Fourth and Tenth federal circuit courts have rejected this statutory interpretation. See Armstrong v. Wilson, 1997 U.S. App. LEXIS 22622 (9th Cir. 1997); Bryant v. Madigan, 84 F.3d 246 (7th Cir. 1996); Granville v. Md. Dept. of Public Safety and Correctional Services, 1997 U.S. App. LEXIS 25749 (4th Cir. 1997); White v. State of Colorado, 82 F.3d 364 (10th Cir. 1996). Thus, there is a split of authority among the various federal circuit courts on an issue of federal law before this court.

7. On September 15, 1997, Defendants filed a Motion to Recall and Stay the Mandate, under F. R. App. P. 41(b), entered by the Third Circuit Court of Appeals decision in the case remanded back to this court. Yeskey v. Dept. of Corrections, 1997 U.S. App. LEXIS 17364 (1997). A decision on Defendants' request has not yet been rendered.

8. On or before October 8, 1997, Defendants intend to file a Petition for Writ of Certiorari to the United States Supreme Court. The Petition will assert that Plaintiff's claims are not actionable under Title II of the ADA, and the split of authority

among the federal circuit courts requires the Court's intervention to clarify this area of law before it is applied to the case currently before this court. SUP. CT. R. 10.

9. There is a case management conference scheduled for Friday, October 3, 1997 at 11:30 AM in the above matter.

10. Defendants lack a mechanism similar to Rule 62(c) of the Federal Rules of Civil Procedure to request the district court to stay the circuit court's decision pending appeal to the United States Supreme Court. However, when an appeal of a district court ruling is pending, FED. R. APP. P. 8(a) provides that a stay of judgment must ordinarily be made in the first instance to the district court. See Marshall v. Berwich Forge & Fabricating Co., 474 F. Supp. 104 (M.D. Pa. 1979) (stating that application for stay pending appeal must ordinarily be sought first in district court and the fact that respondent has filed a notice of appeal does not defeat jurisdiction of district court). Rule 8(a) simply recognizes that the court of original jurisdiction can stay further proceedings in a case until jurisdiction passes with granting of appellate review to a higher court.

11. The factors regulating issuance of stay under both FED. R. CIV. P. 62(c) and FED. R. APP. P. 8(a) include: 1) whether the stay applicant has made a strong showing of likelihood of success on the merits, 2) whether the applicant will be irreparably injured absent the stay, 3) whether issuance of the stay will substantially injure other interested parties, and 4) where the public interest lies. Hilton v. Braunskill, 481 U.S. 770, 777 (1987).

12. The proceedings in this action should be stayed pending the review of Defendants' Petition for Writ of Certiorari by the United States Supreme Court for the following reasons:

(a) this [sic] case presents an appropriate issue for review by the U.S. Supreme Court;

(b) The proposed Writ of Certiorari concerns a matter of great importance to the public as well as the state prison administration;

(c) The decision of the Third Circuit Court of Appeals did not address the merits of Plaintiff's claim;

(d) There is a split of authority among the various federal circuit courts concerning whether Title II of the ADA applies to prisons;

(e) A decision by the U.S. Supreme Court will hopefully resolve the conflict among the circuit courts and give much needed guidance to the state prison administration concerning the applicability of the ADA;

(f) The Defendants' position is supported by the recent case of City of Boerne v. P.F. Flores, ____ U.S. ____, 117 S. Ct. 2157 (1997), which held that the Religious Freedom Restoration Act of 1993, ("RFRA"), 42 U.S.C. § 2000bb-2(l) was an unconstitutional intrusion into each State's right and authority to regulate for the health and welfare of their [sic] citizens;

(g) Defendants' position is further supported by the Supreme Court's line of cases regarding deference to the administrative authority of state correctional authorities. See e.g., Sandin, ____ U.S. ____, 115 S. Ct. at 2299 (federal district courts must "afford appropriate deference and flexibility to state officials trying to manage a volatile environment"); Turner v. Safley, 482 U.S. 78 (1987) ("where state penal institutions are involved, federal courts have a further reason for deference to the appropriate authorities");

(h) As indicated by the Court of Appeals' own opinion, state prison administration is governed by federal constitutional jurisprudence and may ultimately be in conflict with the statutory dictates of the ADA. The Court of Appeals acknowledged the existence of this legal quandary, yet failed to guide the Defendants on how to resolve this apparent dilemma. See Yeskey, 1997 U.S. App. LEXIS 17364 at *19. [sic]

(i) Defendants' request is made in the interest of judicial economy and is not intended to delay or forestall final resolution of these proceedings;

(j) The Plaintiff will not be prejudiced by the stay of proceedings, since he is no longer incarcerated in a correctional facility; therefore he is no longer eligible for enrollment in the program [sic] which he sought admission;

(k) The Defendants will be harmed if the stay is not granted, since they will then be required to defend an action in district court which may ultimately be rendered moot by the decision of the U.S. Supreme Court;

(l) The resources of the parties will be conserved by the stay of proceedings; and

(m) The magnitude of risks and costs facing the Defendants is of much greater proportion than any burden Plaintiff will shoulder if further proceedings are not stayed.

13. Further, it has been held that a district court may authorize a stay pending an appeal without requiring a supersedeas bond to be filed. Olympia Equipment v. Western Union Tele. Co., 786 F. 2d 794 (7th Cir. 1986), cert. denied, 480 U.S. 934, 107 S. Ct. 1574, 94 L.Ed. 2d 765 (1987); Prudential Insurance Co. v. Boyd, 781 F.2d 1494 (11th Cir. 1986).

14. Counsel for Plaintiff has authorized the undersigned to represent that he does not oppose a stay of these proceedings.

WHEREFORE, for the foregoing reasons, Defendants respectfully request this Court to stay further proceedings pending review of Defendants' Petition for Writ of Certiorari by the United States Supreme Court.

Respectfully submitted,

/s/ Sarah B. Vandenbraak
 Sarah B. Vandenbraak,
 Chief Counsel
 Attorney I.D. No. 30382

/s/ Raymond W. Dorian
 Raymond W. Dorian
 Assistant Counsel
 Attorney I.D. No. 48148

Pa. Department of Corrections
 55 Utley Drive
 Camp Hill, PA 17011
 (717) 731-0444

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

RONALD R. YESKEY,	:	
Plaintiff	:	
	:	Civil Action No.
v.	:	1:CV-95-2125
COMMONWEALTH OF PENNSYLVANIA	:	
DEPARTMENT OF CORRECTIONS,	:	(Judge Caldwell)
et al.,	:	
Defendants	:	

CERTIFICATE OF CONCURRENCE

Pursuant to Middle District local rule 7.1, the undersigned counsel hereby certifies that he has contacted counsel for the Plaintiff concerning the above Motion for Stay of Proceedings and Plaintiff's counsel has indicated that he concurs in the Defendants' Motion.

Respectfully submitted [sic]

/s/ Raymond W. Dorian

RAYMOND W. DORIAN
Assistant Counsel
Attorney I.D. No. 48148

Pa. Department of Corrections
55 Utley Drive
Camp Hill, Pa 17001
(717) 731-0444

DATE: September 30, 1997

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

RONALD R. YESKEY,	:	
Plaintiff	:	
	:	Civil Action No.
v.	:	1:CV-95-2125
COMMONWEALTH OF PENNSYLVANIA	:	
DEPARTMENT OF CORRECTIONS,	:	(Judge Caldwell)
et al.,	:	
Defendants	:	

CERTIFICATE OF SERVICE

I hereby certify that I am this day forwarding a true and correct copy of the foregoing Defendants' Motion for Stay of Proceedings upon the person(s) and in the manner indicated below.

Service by first-class mail
addressed as follows:

L. Abraham Smith, Esquire
P.O. Box 1644
Greensburg, PA 15601

/s/ Raymond W. Dorian

Raymond W. Dorian
Assistant Counsel
Attorney I.D. No. 48148

Pa. Department of Corrections
55 Utley Drive
Camp Hill, Pa 17001
(717) 731-0444

Dated: September 30, 1997

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

RONALD R. YESKEY,	:	
Plaintiff	:	
	:	
v.	:	Civil Action No.
	:	1:CV-95-2125
COMMONWEALTH OF PENNSYLVANIA	:	
DEPARTMENT OF CORRECTIONS,	:	(Judge Caldwell)
et al.,	:	
Defendants	:	

ORDER

AND NOW, this 1st day of October, 1997, upon consideration of the Defendants' Motion for Stay of Proceedings, which is unopposed, it is hereby ORDERED that Defendants' Motion is GRANTED and all proceedings in this matter are stayed pending the final disposition of Defendants' Petition for Writ of Certiorari by the United States Supreme Court.

BY THE COURT:

/s/ William W. Caldwell

J.